

**AN INDIANA MAN: ATTORNEY  
CARL M. GRAY  
OF PETERSBURG**

Ralph D. Gray

Bloomington 2013



Addressing the Indiana Supreme Court

Law Day, 1963

## Dedication

To Bill

(The Reverend William O. Harris)

A wonderful friend, minister,  
Historian, librarian, and role model  
Whose gentle nudges over the years  
Prompted the completion of this project

## **Contents**

		<b>Page</b>
	<b>Introduction</b>	<b>5</b>
	 <b>Chapters</b>	
<b>1</b>	<b>Portersville Beginnings</b>	<b>14</b>
<b>2</b>	<b>The Education of an Attorney</b>	<b>29</b>
<b>3</b>	<b>Getting Started</b>	<b>54</b>
<b>4</b>	<b>Senator Carl M. Gray</b>	<b>69</b>
<b>5</b>	<b>Returning to the Law, Full Time</b>	<b>95</b>
<b>6</b>	<b>Cases and More Cases: The 1940s</b>	<b>124</b>
<b>7</b>	<b>Gray and Waddle: The 1950s and 1960s</b>	<b>165</b>
<b>8</b>	<b>The Indiana University Connection</b>	<b>191</b>
<b>9</b>	<b>Final Years</b>	<b>215</b>
<b>10</b>	<b>Legacy</b>	<b>238</b>
	 <b>A Note on Sources</b>	 <b>254</b>

## Introduction

"I never intend to retire. I'm enjoying my profession too much."

Carl M. Gray, 1961

The honors rolled in late in life. In 1966, for the first time in its history, the Indiana State Bar Association recognized the lifetime achievements of one of its members and past presidents by holding "Carl Gray Day" during its annual convention in French Lick. The seventy-year-old attorney from Petersburg, still busily engaged in his practice, was honored through day-long ceremonies that were capped by an evening banquet. Among the speakers at the gala were Governor Roger D. Branigin, a long-time political ally and fellow attorney; United States Circuit Court of Appeals Judge John S. Hastings of Chicago (formerly an attorney in Washington, Indiana, which neighbors Petersburg); Indiana University President Elvis J. Stahr; and the

presidents of both the national and the state bar association, the latter of whom, Paul Rowe, had masterminded the affair from the beginning.

Similarly, but on a grander scale, Carl M. Gray was the recipient of the distinguished Fifty-Year Award bestowed by the American Bar Foundation at its annual convention in New Orleans in 1978. The Petersburg attorney, still in practice more than sixty years after his wartime admission to the bar in 1917, was honored that day along with Senator J. William Fulbright and three others, two distinguished attorneys from large cities and major law firms and a professor of law at Yale University. By contrast, Gray had been a small-town county seat lawyer all his life, representative of what by then was decidedly a minority group within the legal profession, but he had been able to distinguish himself over the long years of his practice and countless civic involvements.

More recognition came in the 1980s, through an article in *U.S. News and World Report* saluting senior citizens who were still active and contributing members of their communities, and when former State Senator Carl M. Gray addressed the Indiana General

Assembly more than sixty years after his election to that body. As expected upon that occasion, Gray reflected a bit about conditions then and now, and discussed some of the legislative issues of six decades earlier. As usual, too, he injected some humor into his remarks, noting for example that the first thing he had done upon joining the Senate was to vote to increase legislators' salaries (a measure that was adopted). Then, quite unexpectedly for honorees upon such occasions, he began to speak about current issues before the state and the nation. Most specifically and in a bipartisan spirit, he endorsed Republican Governor Robert D. Orr's educational proposals then pending before the assembly, challenging the legislators to do something right for the youth of the state.

After this, the 92-year-old ex-legislator went to a football game at Indiana University, and then returned home to resume, in at least a limited way, the practice of law that had been his life for more than seventy years. As he said in an interview in 1961, when he was 65 years old, "I don't know how to retire," and he never did.

My intention in the pages that follow is to trace the career of this remarkable attorney and civic leader. I undertook this study at the request of Mr. Gray himself, although he evidently had in mind a much more modest personal memoir that would mainly include reminiscences of some of his more memorable cases. His death in 1989, at the age of 93, precluded completion of the original project but led, with the support and encouragement of various family members and certain administrators at Indiana University, an institution Carl M. Gray had served with pride and devotion as a trustee in the late 1960s and early 1970s, to this current endeavor.

When Mr. Gray, Carl, first suggested that I undertake this project, I had to decline because of other commitments. But it was an intriguing opportunity and upon his second request, I accepted with the understanding that I would not be able to devote all my time to it until I had completed two other major writing assignments. I had, however (and fortunately, because Carl, already at an advanced age during our preliminary discussion, passed away shortly afterwards), begun a survey of the source material available and conducted a few interviews, not only with Carl himself and



some of his close friends and relatives, but also with perhaps a half-dozen of his professional associates. But when I asked Carl where his personal papers, mainly his correspondence over the years, were located, he replied, "I don't have any." This both surprised and worried me because such personal and contemporaneous files are basic tools for a biographer. As I soon learned, however, Carl did have a fairly extensive cache of such records, but they were filed within his huge collection of case files, more than ten thousand of them. For example, one "case file" was labeled "Rose Bowl Trip, 1968," and other "case files" also contained other discrete records and correspondence regarding different aspects of his life. It is true, though, that Carl's office correspondence was not extensive.

Instead, beginning just after the start of his law practice, Carl relied heavily upon the telephone to conduct as much business as possible. He explained this to me by saying that early in his practice he had become the attorney for the local telephone company, and part of his compensation was free telephone service including long distance calls! This permitted him to stay in touch with not only other attorneys around the state and eventually the nation, but also to converse regularly with political allies, of which there were many,

particularly following his service in the Indiana State Senate. It was a common practice for Carl to make political calls around the state, including several to the governors, particularly the Democratic ones such as Paul V. McNutt, Henry F. Schricker, and Roger D. Branigin.

Unfortunately, however, following Carl's death in 1989 and my recovery from an illness in 1992, just when I was ready to begin regular and steady work on this biography, Carl's family, specifically his niece, Judy, the executrix of his estate, denied me further access to Carl's papers and inexplicably failed to respond to repeated inquiries on this and other matters. Judy even refused and did not allow others such as Carl's former partners, in the Gray, Flieg & Biesterveld law firm, and his long-time secretary, Georgia Sutton Coleman, to answer even one simple question—have these papers, invaluable to me and to the historical record in general, been preserved or were they destroyed? Originally these records were stored in the upstairs rooms of Carl's former law office on Main Street in Petersburg (where I made some hasty but quite helpful searches in the late 1980s), but eventually, the law office having moved to a new location on Ninth Street, the old office was

leased or sold to others. But no one has yet revealed to me the fate of Carl's enormous case file records. Earlier, I had arranged for the librarian of the Indiana Historical Society in Indianapolis to examine these files and this resulted in an offer from the Society to house, organize, and then make them available, according to terms agreeable to the family, to bona fide researchers. This offer was refused and even now, whether or not the papers, which contain (or contained) a veritable history of Petersburg and Pike County during the years of Carl's long tenure as one of its leading attorneys and citizens, have survived is not known to me.

There is, however, an extensive public record regarding this man and his achievements (in newspapers, magazines, court records, and more) as well as in the memories of countless individuals and fellow attorneys who willingly have shared their recollections of the man from Petersburg with me. So I have tried to carry on with the project. Indeed, my own "Carl Gray File" consists of at least six cubic feet (six banker boxes) of material, so there are ample items to draw upon, but, of course, the best first-hand

records—letters to and from Carl—are available only in limited numbers.

In some ways, it is a relief not having to go through such a massive amount of material found in the case files and in some places the narrative below will reveal gaps in the record, but enough remains, I think, to do justice to the memory of this enormously important man from Indiana, one whom I am pleased to say is a distant relative.

Several people have helped me in this project including all those I interviewed some time ago and who are cited in the footnotes. Others who were interested in this work and who provided assistance and encouragement of various kinds include the late Harry V. Huffman and James Farmer, fellow Indianapolis Literary Club members who both knew and admired the other Gray from Petersburg, three of Carl's siblings—his sisters Merle and Marie (later Mrs. Raymond Benjamin) and his brother John, who consented to brief and valuable interviews, as did Indiana University administrators beginning with Presidents Herman B Wells and John W. Ryan, Indiana University Purdue University

Indianapolis (IUPUI) Chancellors Glenn Irwin and Gerald Bepko, and Carl M. Gray Professors William F. Harvey and George E. Edwards as well as Coach Robert M. Knight, a man whom Carl had helped bring to IU shortly after he, Carl, became an IU Trustee and with whom he became quite close during the ensuing years. I also had the benefit of an outstanding research assistant, IUPUI graduate student Jeffrey Duvall, and major assistance from archivist Justin Walsh during his employment at the Indiana State Archives. Walsh, with specific approval to do so from Governor Orr, did me the wonderful favor of passing on a number of Supreme Court files that had been microfilmed and were headed for the shredding machine, thus simplifying my access to numerous cases Carl handled before the Indiana Court of Appeals and the Indiana Supreme Court. I and not they, of course, am responsible for any and all mistakes in facts and errors in interpretation that may appear in the pages below.

## Chapter 1

### Portersville Beginnings

"I was born in Portersville near the saloon, and never got far from one the rest of my life."

Carl M. Gray, 1984

**S**outhern Indiana was the first area of what became the state of Indiana to be settled. The earliest French colonists had made Vincennes, along the lower Wabash River, one of its major military and administrative centers during the eighteenth century. Subsequently lost to the British during the so-called French and Indian War (1754-1763), Vincennes was the scene of George Rogers Clark's dramatic capture of Fort Sackville from the British during the American Revolutionary War. Sporadic fighting and Indian forays in the Ohio Valley, coupled with unsettled conditions along the eastern seaboard of the new United States, prevented substantial western expansion during the latter quarter of the eighteenth century, but the westering desires of Americans led to significant movement into Ohio, Indiana, and Illinois following 1800. In that year, Congress officially organized

the Indiana Territory, President John Adams appointed William Henry Harrison as territorial governor, and a new phase of western history began.

Pioneer Indiana was in many ways a forbidding place. Heavily forested, its soil undisturbed except by wandering herds of buffalo and equally nomadic Indian peoples, southern Indiana was hilly, trackless except for the animal trails, pristine. Yet the land, in places, was fertile, inviting, and invigorating to the pioneer spirits hardy enough to accept the challenge of survival and the prospects of independence, land ownership, and profits. Nearly 25,000 settlers, almost five times the number that lived in Indiana in 1800, occupied the territory in 1810, and that number increased sixfold during the following decade. "They came across the mountains, down the rivers, and over the western trails," according to Indiana historian James H. Madison, in basically three separate "streams of migration" (from New England, the Mid-Atlantic states, and the upland South).<sup>1</sup> By far the greatest number of these early settlers came from the upland South—western Virginia and North Carolina, eastern Tennessee and Kentucky. Typically, these pioneers had

ventured across the Appalachians into western Tennessee and eastern Kentucky at the end of the Revolutionary War. The advent of a new century witnessed a trickle, a larger flow, and then a flood of new settlement north of the Ohio River.

The first Grays, including Carl M. Gray's (and the author's) pioneer ancestors, were a part of this typical migration pattern, arriving in Indiana before the state was organized. William and Keziah Ball Gray reached the Indiana Territory in 1811, settling first at White Oaks Springs (near where Petersburg was subsequently platted) and then at nearby Highbanks, along the southern reaches of the eastern fork of White River. The Grays raised a large and enterprising family of ten children in this locality.

According to family tradition, Keziah Ball (1790-1856) was, at the time of her birth, a distant relative of the sitting and first president of the United States. George Washington's mother was Mary Ball Washington (1708-1789), a young woman from Lancaster County, Virginia, who had lived as a child in both Northumberland and Westmoreland counties. She married Augustine Washington of Westmoreland County in 1731, a widower with three children, and



they subsequently had five more children. Their first child, a son, George, was born on February 22, 1732. Following Augustine's death in 1743, Mary Ball Washington remained in eastern Virginia, the last twenty years in Fredericksburg. How this lady was related, if at all, to various Ball families in western Virginia is not known. What is known is that John Ball (1758-1809), Keziah Ball Gray's father, was one of the pioneer settlers in Lee County, the westernmost county of the state. A participant in the American Revolutionary War, Ball (again like President Washington) was also a surveyor and landowner in Virginia. A relationship between John (and Keziah) Ball and Mary Ball cannot be verified and is, in fact, doubtful.<sup>2</sup>

Similarly, although a great deal can be learned about John Ball, whose gravesite is marked by a large roadside sign on the outskirts of Jonesville, the county seat of Lee County, very little is known about the background of William Gray. Again, according to family tradition, William (1794-1864) was employed on the Ball estate, perhaps as a tenant. His courtship of the accomplished and, especially for the times, well-educated Keziah was frowned

upon by the Balls, causing the young couple to elope at some time during 1808. They were married at Cumberland Gap, at the border between Virginia and Kentucky, while en route to a new home in the West.<sup>3</sup>

The first of their ten or eleven, perhaps even twelve, children, a son James, was born in either 1809 or 1810, probably in Kentucky where the Grays resided briefly before continuing westward and northward into Indiana, and their eldest daughter, Betsy, was born in 1811. This foursome arrived at the blockhouse at White Oaks Springs in 1811, only a short time prior to the onset of fighting, first with the massed warriors of Tenskwatawa, better known as the Prophet, and Tecumseh at Tippecanoe and later with the British and their Indian allies. Indeed, it had been for defensive purposes that the White Oak Springs blockhouse, like many others across the southern tier of Indiana, had been erected. There, Keziah Ball Gray and her two children remained while her husband served in the militia under the command of William Henry Harrison, beginning with participation in the advance toward and then the

battle of Tippecanoe, the latter of which occurred on November 7, 1811.

Following his year of military service and while the War of 1812 still raged, generally at points far removed from southern Indiana, William and Keziah Gray purchased property adjacent to White River, in the extreme northeastern part of what is now Pike County. There, near a community known as Highbanks, the Gray family settled, farmed, and expanded even more. In time at least eight other children were born into the family, three of whom (Milton, Sansom, and William) died between the ages of 9 and 20. The remaining children all reached adulthood and, with one possible exception, married and had children of their own.

Their lives must have been typical of those who lived on the Indiana frontier in the first years of statehood.<sup>4</sup> Their formal education was limited, but at least they had the advantage of a literate and energetic mother. Keziah Gray not only taught her own children the rudimentary skills with letters and numbers, but she opened her doors to other children in the neighborhood.<sup>5</sup> Beyond this, the Gray youngsters roamed the woods, hunted and fished

(both for pleasure and purpose), and learned the skills of pioneer farming. Their father, like most of his generation, was unschooled (and unable to read or even to write his name) but he was a hard-working, enterprising man and a good role model for his children.<sup>6</sup>

Whether or not the Grays followed the practice common to many in their neighborhood of shipping their own farm produce downriver to market, perhaps as far away as New Orleans, is uncertain. In addition to their farming activities, however, on at least one occasion but probably others too, William Gray and some of his sons took up the art and craft of flatboat-building.

Flatboating was a major activity on the rivers of mid-America, even long after the onset of the steamboat age, and countless farmers in southern Indiana transported their own crops, particularly corn, fruits and vegetables, and livestock (mainly hogs), to market in New Orleans.<sup>7</sup> In 1851, William Gray and one of his sons, Spencer, contracted to build a flatboat and supply it with a load of shelled corn for shipment to New Orleans by its new owner, Jonathan Wilson. The boat, 66 feet long and loaded with 2,891 bushels of corn, carefully bagged and tied in some one thousand gunny sacks,

departed for market on April 1, 1851. "Properly man[n]ed and furnished with pilots," the boat descended the White and Wabash rivers into the Ohio, and thence headed southwest. Warranted by its builders to be "good sound substantial well built & merchantable," the vessel did not, in fact, according to its aggrieved new owner, have "sufficient size & strength" to be "suitable for transporting to New Orleans" the produce in question. Instead, "on the Ohio it filled with water, became wrecked and sank . . . ."8

Consequently, Wilson sued the boat builders in an effort to recoup his losses. Unfortunately, the outcome of this suit is unknown, but it seems likely that it did not succeed. Whatever its outcome, flatboating remained popular in the community and Spencer Gray (1821-1903) went on to become "one of Pike County's most prosperous and successful farmers in Jefferson Township."<sup>9</sup>

One of the other Gray sons was John, who was born at Highbanks in 1818. It is unlikely that John was involved in building the flatboat involved in the lawsuit (although he may have supplied some of the bags of corn and assisted in building other flatboats earlier), for he had set out on his own before then. In

1843, at the comparatively advanced age of 25, John Gray married Elizabeth McCafferty from Alabama. The bride was only 18 at the time of her marriage. The new couple set up housekeeping at a nearby location in northeastern Pike County, and soon were the proud parents of four children--three sons and a daughter. The eldest son was at most twelve years old when his father died--an all-too-common tragedy of the frontier experience. In fact, John Gray, his next younger brother Henry, and their mother Keziah all died in 1856, at the ages of 38, 37, and 66, respectively, perhaps victims of the cholera epidemics that repeatedly swept through the area in the 1850s.

The second son of John and Elizabeth Gray, however, survived. This lad, Albert, whose birth occurred on the sixty-ninth anniversary of the signing of the Declaration of Independence (July 4, 1845), came to manhood during the post-Civil War years. Southern Indiana at that time was just emerging from its pioneer, subsistence-type existence and developing a more diversified economic and political life. The life of the farmer was still hard--according to one disaffected farm youth at about this time,

everything on a farm had to be lifted, and everything was heavy, so he opted for a life in the city--but many remained on the farm, as did Albert and his first wife, Mary Harris, three years his junior, whom he married on May 14, 1868.<sup>10</sup>

Mary also belonged to a pioneer family in southern Indiana, the Harrises having come from North Carolina to Dubois County, which earlier had been part of Pike County and, before that, part of Knox County. Judge Daniel Harris, Mary's father, once remarked that his property taxes had helped pay for the public buildings in three counties (Knox, Pike, and Dubois) although he himself had always lived in the same place.<sup>11</sup> The Harris homestead was to the east of the Grays, up the east fork of the White River from Highbanks, and it was in Dubois County, but quite near the Pike County line, that Albert and Mary Harris Gray began their life together in 1868.<sup>12</sup> Two years later their son, John D. (Daniel, for Grandfather Harris), was born, and in 1881 the family moved "to town," to the small village of Portersville, a river community in Dubois County and its first seat of government. Porterville's remoteness from the center of the county led to removal of county

government to a more central spot in 1830, a place named and platted as Jasper. The move had occurred largely through the efforts of local citizens who pledged not only the necessary land but an equally good courthouse and jail "free of charge to the taxpayers." Portersville survived as a tiny farm and river town, and as the home community of such prosperous farm families as the Grays, the Harrises, and the Rudolphs.<sup>13</sup>

It was in Portersville that John D. Gray met and married (in 1892) Emma Louise Rudolph, a daughter of German immigrants who typified the increasingly large number of Germans who came to populate and dominate culturally Dubois County. It was also in Portersville, on September 3, 1895, that the eldest son, Carl M. (Morton), was born. In time, eight other children, six of whom survived infancy and distinguished themselves in their chosen careers and all of whom lived into the 1980s, were born of this union. In addition to Carl, born in 1895, the other children were Merle (1897), Clyde (1899), Glen (1901), Mabel (1903), John (1906), and Francis (1915). Collectively, they can be described as members



of a remarkable family that had considerable impact upon their adopted communities and professions.

## Notes to Chapter 1

### Portersville Beginning

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<sup>1</sup> James H. Madison, *The Indiana Way* (Bloomington and Indianapolis, 1984), 58.

<sup>2</sup> Douglas Southall Freeman, *George Washington* (7 vols., New York, 1948-1957), I, xx; Frederick Bernays Wiener, "Washington and His Mother," *American History Illustrated* (1991), 44, 47. The curators of the Mary Ball Washington Museum and Library in Lancaster, Virginia, agree with this position: "To the best of our knowledge there is no proof that the Ball families of southwestern Virginia were related to Mary Ball Washington." Margaret L. Hill to author, Lancaster, Virginia, July 3, 1991. See also William Woodson Hodkins, *John Ball of Lee County Virginia and His Descendants* (Rockford, Ill., 1975), 27, 30-31. John Ball's wife was Polly Yeary; his father was George Ball, a native of Fairfax County, Virginia, born in 1720.

<sup>3</sup> Some Gray family members believe that William Gray and Keziah Ball were married at Lookout Mountain, situated on the border between Georgia and Tennessee, rather than Cumberland Gap, but geography suggests otherwise. Lee County, a triangular-shaped region, is adjacent to the Cumberland Gap in Kentucky; John Ball's grave, west of Jonesville, is only a few miles from the Kentucky state line and Cumberland Gap.

<sup>4</sup> Historian Logan Esarey, who himself grew up on a farm in southern Indiana, has written eloquently and knowingly about pioneer life and culture in *The Indiana Home* (Bloomington, 1943). He describes the farming routine, season by season, the continuous work of the farm wife, and other aspects of pioneer life such as education, entertainment, and religion.

<sup>5</sup> See Cecil Logan, "History of Highbanks," and Laura Gray Budd, "The Gray School," in "Pike County, Indiana: Articles from the Pike County Historical Society, 1988," typescripts and manuscripts, Local History Room, Barrett Memorial Library, Petersburg, Indiana. For evidence of William Gray's illiteracy, see "his mark" for Gray's signature in *William Gray v. Nathan Hathaway*, December 1825, Box 6, File 5, Pike Circuit Court Records [PCCR] (Pike County Courthouse, Petersburg, Indiana).

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<sup>6</sup> See Michael Allen, *Western Rivermen, 1763-1861: Ohio and Mississippi Boatmen and the Myth of the Alligator Horse* (Baton Rouge, 1990), for a detailed analysis of flatboating, including its persistence, even its heyday, after steamboats also came to the rivers.

<sup>7</sup> *Jonathan Wilson v. William Gray [and] Spencer Gray*, August 12, 1851, Box 39, File 5, PCCR. A clue to the local pronunciation of Carl Gray's home county appears in this case record, where the county name is spelled "Due Boy."

<sup>8</sup> Spencer Gray obituary, *Pike County Democrat*, 1903, clipping in the Carl M. Gray Papers, Petersburg. According to Dubois County historian George R. Wilson, "It was no small undertaking to pilot a boat successfully to southern markets. Occasionally one would sink, and with its cargo, be a total loss to its owner. A cargo was often worth \$3000." *History of Dubois County from Its Primitive Days to 1910* (n.p., 1910), 151.

<sup>9</sup> Sources vary concerning the date of Albert C. Gray's birth in 1845. For the July 4 date, see [Goodspeed's] *History of Pike and Dubois Counties, Indiana* (Chicago, 1885), 706.

<sup>10</sup> Judge Daniel Harris (1796?-1866), Carl M. Gray's great-grandfather and one of the men for whom his father, John D. Gray, was named, was a militia officer in Dubois County in the 1830s, after having served as county sheriff for four years. His public career also encompassed brief tenures as associate, or "side," judge in the county court, probate judge, justice of the peace, and county commissioner. Wilson, *History of Dubois County*, 180, 266, 267, 276, 277.

<sup>11</sup> Albert C. Gray (1845-1928), Carl M. Gray's grandfather, was married four times. His first wife, Mary Harris (1848-1887), whom he married in 1868, bore four children, all of whom (John D. [Carl's father], Mattie [Cooper], Perry, and Roy) survived into the 1930s). Albert's second wife, Kate Rudolph, bore two children--Harry and Nelle. His third wife, Ida Wiseman, by whom he had a daughter, Mae, was killed in an unfortunate streetcar accident in Washington, Indiana, in 1913. *Pike County Democrat*, August 1, 1913. In 1916, at the age of 70, Albert Gray married Laura Dorsey, who survived him. They were residing in Winslow at the time of his death in 1928. *Ibid.*, October 13, 1916; *Petersburg Press*, November 30, 1928. Albert Gray was buried at the Lemmon Church cemetery, near the site of the farm on which he had been born.

<sup>12</sup> Merle Gray Papers, Indianapolis, Indiana.

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<sup>13</sup> *History of Pike and Dubois Counties*, passim; Wilson, *History of Dubois County*, passim; Carl M. Gray Papers, Petersburg, Indiana.

## Chapter 2

### The Education of an Attorney

“I attended the common schools of Alford and Petersburg, and then Indiana University.”  
Carl M. Gray, 1988

I ndiana, particularly rural southern Indiana, at the turn of the century, was still uncertain about its future. Part of it wanted to join the twentieth century, develop its economic potential, build factories and large cities, and participate in the modernization of the country then proceeding so breathtakingly rapid in some parts of America. But another portion of the state's population was content with its lot, happy to be able to provide for the basic necessities of life, and willing to accept the hard labor and privations attached to life on an isolated farm or in a small town. In some ways the Gray clan of northeastern Pike County-northwestern Dubois County belonged to this latter group. Most family members settled in as tillers of the soil and providers for their families. They also looked after the spiritual welfare of themselves and their

progeny. Near Highbanks, for example, was the Gray Church, erected on land provided for that purpose by Spencer Gray, who was himself a loud and enthusiastic member of its "Amen corner" each Sunday morning.<sup>1</sup>

So too were the Grays in Dubois County considered pillars of the Portersville community, even though the town itself had ceased to be an important center by the time, 1895, Carl M. Gray was born. The family remained in Dubois County only five years after this event, moving to Pike County in 1900, where Carl resided for the rest of his life, excepting only brief stints in the army during World War I and while attending Indiana University in Bloomington both before and after the war (1915-1916, 1919-1920). Carl grew up on a farm in Alford, a small community near Petersburg, Pike County's seat of government. There, amid a growing number of siblings, Carl was something of a father figure to them. His responsibilities included not only helping with the chores but also, as he grew older, bringing in some additional income through odd jobs around the neighborhood whenever possible. Carl learned to dislike "farm work," but he did what he was expected to do and was

admired by the younger children for his cheerful camaraderie and leadership.<sup>2</sup>

Little is known about Carl's formal education, what he called his "common school" education in both Alford and then Petersburg, and his performance as a student. There can be no doubt of his native intelligence or his industry, and the general competitive, even aggressive, nature of his family must have spurred him on to at least better than average if not superior marks. Even an early episode of eye trouble which proved to be chronic, whether from injury or infection is not known, did not deter Carl from the achievement of his goals.

That an isolated and agricultural way of life was not going to be sufficient for the children of John and Emma Gray was evident from an early point. True enough, their early lives were typical of Hoosier farm families, first in Portersville and then in Alford. The Pike County farm proved to be a congenial location for the head of the family, who enjoyed a political career from his agricultural home base for many years. Within six years of moving into the county, John Gray was elected trustee of Washington Township and he

gained a county-wide office shortly thereafter. In all, he served eight years as Pike County Auditor (1908-1916). John D. Gray, a life-long Democrat in a heavily Democratic area, was often referred to as "highly popular," a label he deserved, even if it did not actually result, from the fact that he frequently led the Democratic ticket as a vote-getter. He also served at least one term as chairman of the Pike County Democratic Central Committee, beginning in 1916. Even a stint as the county's first Internal Revenue Service's agent following enactment of the Sixteenth Amendment and the institution of direct income taxes, did not destroy John Gray's popularity.<sup>3</sup> His political experience also served his first son well when he too entered electoral politics in the 1920s.

Long before entering politics, however, young Carl held a series of jobs intended to generate some cash income while he also did his regular chores on the farm, a 130-acre unit that was termed in the local press "one of the finest farms in the county."<sup>4</sup> As eldest son, Carl carried the largest burden, particularly when the demands of political offices required his father to be away from home. Carl remembered in 1988 that his first "paying" job--at the



age of six--was selling shoe polish in the neighborhood for one cent a bottle. Later on, as he grew up, he got jobs on nearby farms, working from 6 a.m. to 6 p.m., with a half-hour off for lunch, for 50 cents a day. Still later, he was hired to hoe corn for 75 cents a day, working alongside men doing the same job for \$1.00 a day. When Carl pointed out to the farmer-employer that he was hoeing as much corn as anyone and asked for equal pay, he got it.<sup>5</sup> Perhaps his talents as an advocate, so well employed in the courtroom later on, were with him from the beginning.

Carl's most vivid recollections of his employments as a boy, however, relate not to the farm but to the coal mines that dotted the Pike County landscape. Both Pike and Dubois counties were major coal-producing areas in Indiana, and places could be found for strong and energetic boys willing to work hard. Carl had been introduced to coal mining through a mine on his grandfather's farm in Dubois County, which the lad often visited during school holidays. He was fascinated by the mining operations: the underground shaft, the blasting that occurred in order to loosen the coal, the mules and mule cars, and the hard labor, with picks and

shovels, involved in loading the cars and bringing the coal to the surface.<sup>6</sup>

While still a high school student, Carl worked for a short time in a large, deep-shaft mine in nearby Blackburn, Indiana. The mine was operated by the S. W. Little Coal Company, which then employed some one hundred miners underground. Carl remembered shoveling coal into a seemingly endless stream of coal cars. The target of the miners was to load, not the sixteen tons of ballad fame, but twenty tons a day.

Carl Gray described his work in the S. W. Little mine to an Indiana University interviewer in 1979:

When I was fourteen or fifteen years of age I worked in the deep mine as an apprentice, and we loaded the coal with shovels. . . . These cars--coal cars--would hold about a ton of coal and they were pulled by mules. Had a track in the mine [to] the tippie--that's where the coal was hoisted . . . and run through the tippie where it was screened and prepared for the rail market. . . . I was paid seventy-five cents a day for work in the mine at that time; walked two miles to work and two miles back; and was delighted to have the seventy-five cents a day for my day's work [from 7 a.m. to 3 p.m.].<sup>7</sup>

These coal-mining experiences, along with the rugged farm labor he customarily performed, served Carl well during his high school athletic career. He attended Petersburg High School from 1911-1915, being slightly older than his classmates (and nearly

twenty upon graduation), but he participated fully in the school's extracurricular activities. He was a starting tackle on a surprisingly good football team that held its own, even in games with teams from much larger schools. Petersburg's star player, a fleet running back named Byron Heuring, was also an outstanding track and field athlete. In the spring of 1914, Heuring evidently had won both the 100- and 220-yard dashes in the state championships at

Crawfordsville, but his victory in the longer race was taken away for running outside of his lane.<sup>8</sup>

Nevertheless, his speed had been demonstrated and it was put to good use in the ensuing fall on the gridiron. In that season, after a

disappointing upset loss in the opening game at Huntingburg High School, the team went undefeated.<sup>9</sup>



Carl Gray was one of the football players singled out and commended by the sports reporter for "fine work in tackling" and for all-around good play during the season.<sup>10</sup> He was also mentioned by

name in a newspaper story about a fried chicken dinner party given in honor of the football team by the Reverend Boldrey, pastor of a local church. At the dinner, both Carl and Charles Nicely, another large lineman on the team, were credited with "six fowl tackles . . . without a penalty."<sup>11</sup>

By interesting happenstance, Walter E. Treanor, the high school principal and later the Pike County school superintendent, was also the football coach. He was a highly respected educator and scholar who later taught law at Indiana University in Bloomington, served on the Indiana Supreme Court (before whom Attorney Carl Gray argued several cases), and was serving on the United States Court of Appeals, Seventh Circuit, in Chicago at the time of his death (at the age of 57) in 1941.<sup>12</sup>

A strict disciplinarian, Treanor once canceled a football game after catching some members of the team smoking cigarettes, but his talents as a football coach may have been limited. When Carl played on the freshman football squad as a halfback, not a lineman, at Indiana University in 1915, his football coach happened to be the famed Olympic athlete, Jim Thorpe. Carl said that he learned more

football in one week under Thorpe than ever before. Among other things, Thorpe advised deception by the ball carriers, "not looking where you're going to run," a concept perhaps that Carl expertly applied during his law practice when appropriate.<sup>13</sup>

It may come as a surprise to many to read that the Olympic star, Jim Thorpe, was an Indiana University coach, as it was to me when Mr. Gray, in response to my question about his football coach, named the Olympian. Initially I thought that Mr. Gray was perhaps fantasizing or had certain facts confused, but when I looked into it, I learned that Thorpe had indeed served on the coaching staff in Bloomington during the time Carl was there. The head coach Carl uncharitably characterized as incompetent ("didn't know shit from shinola," to quote him exactly), but, he beamed, "my coach was Jim Thorpe."<sup>14</sup>

The coach Carl disliked was C. C. Childs, a former captain of Yale University's track and field team as well as a star performer on the university's football team. Indeed, Childs had participated in the Olympic Games in Stockholm in 1912, winning the bronze medal in the hammer throw while Thorpe won gold medals in both

the pentathlon and the decathlon. Evidently, Childs had persuaded the star of those games to join his coaching staff in Bloomington.

As the Indiana University yearbook indicates, and as confirmed by Carl Gray, Thorpe was highly popular and his occasional halftime kicking exhibitions (60-yard dropkicks) were awe-inspiring. Despite Carl's strictures against the head coach, football as a varsity sport grew in popularity during Child's tenure. More than sixty men were on the freshmen team alone, some twenty-six of whom, including Carl, were "awarded numerals."<sup>15</sup>

More than farming, football, or summer employment in Petersburg-area coal mines, clearly the most important and influential event during Carl's high school years in determining his future was the murder trial in Petersburg that he was permitted to witness in 1913. At that time, the young man decided to become an attorney himself, and from that moment on, he was relentless in pursuing his goal. He envisioned himself, if things went according to plan, on center stage upon other such momentous occasions. Possibly the fact that an older cousin, the distinguished Richard M.

Milburn of Jasper, was one of the lawyers in the 1913 case added to the impact and intimacy of the trial.<sup>16</sup>

This case stemmed from a fatal altercation in Dubois County, in the village of Dubois, in September 1912. A disturbance started in one of the business establishments in town, spilled out into the streets, and eventually led to the death, by pistol shot, of one Isaac Hardin, a popular young man of the community. Arrested and then indicted upon charges of premeditated murder in the Dubois Circuit Court in Jasper was one Oliver Bledsoe, a young man of an outlying area. Initially scheduled for trial in December in Jasper, the trial was both delayed until April and venued to the Pike Circuit Court in Petersburg.

It is easy to understand the young high schooler's interest in the case. It had all the drama of a modern movie or television show, and more. At least some of the cast of characters, perhaps even the victim and the defendant were known to Carl (who, at eighteen, was the same age as the defendant), and it all occurred, figuratively speaking, in his own back yard. The courthouse stood only a block from the high school. Consequently, Carl requested,

and was given, permission to skip school (despite the nearness of the end of term and final examinations) and attend the proceedings, sometimes even riding to the courthouse with his cousin, an attorney in the case.

The eight-day trial opened on April 30, 1913, with Judge W. S. Hunter of Jasper sitting in for Judge John L. Bretz, absent because of a death within his family. The defense lawyers, including Milburn, began their case by filing for a separation of the witnesses, claiming that the witnesses were prejudiced, wanted Bledsoe's conviction, had discussed their testimony among themselves, telling each other "what they were going to swear to," and that many of the twenty-odd witnesses to the shooting were themselves guilty of assault and battery upon the defendant, but this motion was denied.<sup>17</sup>

The rest of the first day was consumed in selecting a jury from among the regular panel and a special venire of fifty additional prospective jurors. On May 1 the jury was sworn in and the prosecuting attorney, H. W. Carpenter, made his opening statement



to the jury. Then a parade of witnesses followed, beginning with the doctor who had examined the body of the deceased.

Witness examination by both the prosecutor and the defense lawyers occupied the rest of the week and the following Monday, with final arguments presented on Tuesday and Wednesday. Again Prosecutor Carpenter opened (and closed) the arguments; the defense's arguments were presented by three attorneys, Milburn, his partner, Michael Sweeny, and R. W. Armstrong of Huntingburg. (The Petersburg firm of Ely and Corn served as local counsel, but took little or no part in the litigation.)

Judge Hunter then carefully instructed the jury. The young attorney-to-be in the audience must have been impressed with the judge's humanity and even-handedness, particularly as it was revealed in his eloquent twenty-first and final charge, in which he called upon the jury to do its duty: "Counsel has brought the evidence before you and given you their ideas as to what it proves or does not prove, and the court has endeavored to advise you as to the law . . . ." <sup>18</sup> The jury needed only thirty minutes to return a verdict of guilty, not of murder but of manslaughter. Furthermore,

following "lengthy discussion" of pleas for parole, the judge did parole young Bledsoe "upon good behavior," dismissed the jury, and adjourned court.<sup>19</sup>

If the Bledsoe case, fortuitously transferred to Petersburg just at the moment young Carl Gray was casting about for his life's work, had an impact upon his ultimate decision to become a lawyer, so too did an unknown restaurant owner's intemperate words in Crawfordsville have a strongly determinative influence upon Carl's life. In 1915, upon graduation from high school and after another summer's work to earn money for college, Carl and fellow Pike Countian Oscar Evans traveled north to Crawfordsville to enroll in Wabash College.<sup>20</sup> How then did he get to Bloomington and a place on the Indiana University freshman football team? As Carl explained it in 1987, he had gone to Wabash in order, among other things, to be a football star. Immediately upon his arrival at the college, he obtained a job in an off-campus restaurant "with a big fat cook." This man happened to hit the swinging door of the kitchen just as Carl was entering the kitchen, causing him to drop the tray full of dishes he was carrying. This resulted in Carl, not

the cook, being sworn at by the owner of the restaurant (and the dishes). Evidently already lonely for his football comrades headed for Bloomington, Carl abruptly returned home, made his explanations, and then departed for Bloomington. There he joined Eddie Harris, Arthur Chandler, and others from Petersburg also attending Indiana University. Carl roomed with two of his friends, sharing rooms that cost \$2.00 per week, with board an additional \$2.00 per week. In order to make even these modest payments, Carl took on a variety of jobs. At one point, in a task that might have made others jealous, he was the janitor at a sorority house. But the work was an economic necessity. One of Carl's sisters recalled that when her brother first enrolled in college, his clothing was little but "patches upon patches."<sup>21</sup>

Despite certain deprivations, Carl was reasonably happy at school, and was doing well in his studies and his sporting events, but for reasons never fully explained, he was forced to leave the university after little more than one semester. It may have been the recurrence of an eye problem, one that had developed during his adolescence on the farm, or it may have been for financial reasons.

At any rate, Carl's loyalty and devotion to Indiana University dated from his first but abbreviated association with it in 1915, and it remained strong throughout his life. Carl's activities immediately upon his return home are not known, particularly since, in 1915, Carl's father had made a highly publicized trade of properties, giving up the farm at Alford in exchange for a large Victorian house, located at the corner of Sixth and Walnut streets, in Petersburg.<sup>22</sup>

The local newspaper, although it had reported the visits home from Bloomington of Carl and his friends at Thanksgiving and Christmas, did not take note of Carl's departure from the university. It did, however, report his employment, in April 1916, as a rural route mail carrier. This sometimes involved use of a saddle horse, or a horse and buggy, the roads of Pike County being still almost totally unimproved, that is ungraveled, so that dirt (or mud) roads were common.<sup>23</sup>

Carl's career as a mail carrier was destined to be short. Events far removed from Pike County and Indiana University had become increasingly tense, war had begun in Europe, and the likelihood of American involvement, or at least a preparedness

campaign, was clear. To Carl Gray, his personal responsibilities as a citizen were equally clear. Consequently, shortly after the United States entered the conflict known as the Great War or World War I, and months before conscription became the law of the land, Carl M. Gray--on May 5, 1917--enlisted in the United States Army, and he remained in the service of his country until January 1919.

Carl took his basic training at Jefferson Barracks near St. Louis, Missouri, and later was stationed at Fort Sheridan in Illinois, where he was an instructor in the initial officer's training program on that base. Later he performed similar duties at Camp Greene in North Carolina, and Fort Lee Hall in Virginia. As the Petersburg newspaper reported in August 1917, when Carl was home on furlough, the young soldier was "looking well and enjoying army life immensely. Like all other boys in the service he wants to go to France and do his bit." To his great chagrin, however, he had to do his bit at home, eventually serving in the medical corps and later in the adjutant general's office.<sup>24</sup>

An event of considerable importance to Carl and to his future career, if not to the war effort during the fall of 1917, occurred

during his next visit home. At that time, on November 17, 1917, as spread upon the pages of Civil Order Book 15 in the Pike Circuit Court, Judge John L. Bretz presiding, "Carl M. Gray appeared in open Court and on motion was, by order of the Court, admitted to practice law in all the Courts of the state." The brief ceremony of admission to the bar involved Carl taking an oath to support the constitutions of the United States and of Indiana, and "to faithfully and honestly exercise the authority and discharge the duties of an attorney-at-law" to the best of his abilities.<sup>25</sup> This official record gives no further details, no indication of who his sponsors were, and neither did the local press report this event. It was, nevertheless, momentous in Carl's life, oft-remarked upon in later life with complete accuracy regarding the date and the circumstances (for example, he was in his army uniform at the time). Obviously, the Petersburg bar wanted to have one of its members under arms in the service of the country. Age, the press of business, and perhaps other factors kept the practicing attorneys from enlisting, but Carl's presence, his announced goal in life following the war, and his

promise as a contributing member of society made him an ideal candidate for early induction.

As such, then, Carl Gray entered the bar and the eventual practice of law as a "constitutional" lawyer, one who had neither graduated from a school of law nor passed a bar examination. The Indiana Constitution of 1851 permitted any citizen possessing "good moral character" and the support of at least two members of the bar, who were themselves "in good standing," to become an attorney. This practice persisted in Indiana until it became an anomaly. Eventually, in 1931, the Indiana General Assembly ended this method of admission to the bar, but years passed before all so-called constitutional lawyers were outnumbered by attorneys who had followed the now traditional path of law school training and passage of the bar examination.<sup>26</sup>



### **Admitted To Bar In WWI Uniform**

Carl M. Gray was admitted to the bar in his World War I army uniform when he was home on leave. He had prepared to start practice before the war but when the war started he volunteered. This was before he was admitted to the bar.

When he came home on leave local attorneys invited him to be admitted and he was admitted. Press-Dispatch, Oct. 10, 1977

Circuit Court at the time presided over the ceremonies in the court room. Edward Richardson moved that he be accepted and all the 10 county attorneys were present at the ceremony and unanimously accepted the move.

Mr. Gray is shown above in his uniform as he looked at the time of his acceptance.

In some county seats, it was not unknown for various denizens of Main Street, such as grocers and other merchants, to have membership in the bar. This was done not so that they could practice law on their own behalf or represent others, but simply to protect themselves from repeatedly being called in for jury duty by a harried sheriff needing more potential jurors upon short notice.<sup>27</sup> In Carl's case, however, his premature admission to the bar was more a gesture of good will on the part of the local bar and an inducement for the young soldier to enroll in law school as soon as possible following the end of the war.

The war's end came, of course, almost exactly a year following Carl's eventful furlough in November 1917, and he remained in service just over two months after that. Discharged on January 31, 1919, Carl went immediately to Bloomington to resume his studies at Indiana University and to obtain at its School of Law, if not a necessary credential for the practice of law, at least a desirable one. Graduation from the Indiana University School of Law, clearly the most prestigious one in the state, carried with it tangible evidence of one's abilities and suitability for the practice of law in Indiana.



Such a credential, however, eluded Carl Gray for more than forty years, in part because of his eagerness to get into practice as soon as possible, his own stubbornness in the face of equal intransigence on the part of the dean of the law school, and financial exigencies. As Gray explained it years later, he needed only eight to twelve more credits in order to graduate. The dean, however, while agreeing as to the number of hours needed, also insisted upon Carl fulfilling a residency requirement of twenty-seven months on campus. Carl considered this not only unreasonable and unnecessary but positively impossible for financial and career considerations. Already a member of the bar, he abruptly withdrew from school, returned to Petersburg, and, on November 1, 1920, at the age of twenty-five, figuratively but perhaps literally at well, hung out his shingle: Carl M. Gray, Attorney at Law.<sup>28</sup>

Despite his testy departure upon, as he put it, telling the dean to “Go to hell,” Carl benefited enormously from his abbreviated formal study of law at the university and from the contacts he made there. Paul V. McNutt, soon to be dean of the law school and then

governor of the state, 1933-1937, during the depths of the Great Depression, was one of Carl's professors; so too was his former high school football coach, Walter E. Treanor, an eventual member of the Indiana Supreme Court and then the federal bench. Although the courses taken and the grades received are not known, it is clear that Carl had, in fact, taken most of the courses required and was confident that he had more than enough training, coupled with his innate abilities, to succeed in a life in the law.

## Notes to Chapter 2

### The Education of an Attorney

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<sup>1</sup> Laura Gray Budd, "The Gray School," 6; undated obituary of Erasmus Gray, son of Spencer Gray, in Merle Gray Papers, Indianapolis.

<sup>2</sup> Author interview with Mabel Gray Benjamin, Dec. 17, 1991.

<sup>3</sup> See, for example, *Pike County Democrat*, November 6, 1914, February 26, 1915, and May 26, 1916.

<sup>4</sup> *Ibid.*, February 26, 1915.

<sup>5</sup> Author interview with Carl M. Gray, Petersburg, March 10, 1988; see also Susan Hanafée, "Carl M. Gray: Still on the Legal Scrimmage Line," *Indianapolis Sunday Star Magazine*, March 7, 1981, 6-10.

<sup>6</sup> *Ibid.*

<sup>7</sup> Interview of Carl M. Gray by R. T. King, April 12, 1979, Indiana University Oral History Research Project, Bloomington. A 60-page transcript of this interview, which focused on the coal industry in Pike County, is in the Oral History Archives.

<sup>8</sup> *Pike County Democrat*, May 22, 1914.

<sup>9</sup> *Ibid.*, Nov. 27, 1914. In 1918, this newspaper published a picture of Petersburg High School's "superb" track team under the heading of "Athletes in Service." With only one exception, all members of the 1914 team, including of course Carl Gray, served in the military during World War I.

<sup>10</sup> *Ibid.*, Nov. 27, 1914.

<sup>11</sup> For information on Judge Treanor's brief career, see Ralph D. Gray, "Walter E. Treanor, January 8, 1931-January 4, 1938," in Linda C. Gugin and James

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E. St. Clair, eds., *Justices of the Indiana Supreme Court* (Indianapolis, 2010), 271-73.

<sup>12</sup> Author interview with Carl M. Gray, March 10, 1988.

<sup>13</sup> Ibid.

<sup>14</sup> Louis W. Bonsib, ed., *The 1916 Arbutus: A Motion Picture of the Life and Customs of Indiana University* [Bloomington, 1916?], 68-71, 90. Bob Collins, a preeminent sports columnist for *The Indianapolis Star*, mentioned his own astonishment upon learning, late in his career, that Jim Thorpe had this Indiana University connection.

<sup>15</sup> Milburn (1865-1915), a native of Dubois County, served in state senate from 1903 to 1907, served briefly as a law professor at Indiana University in 1902-1903, and was Indiana's Attorney General at the time of his death. See Alan January and Elizabeth Shanahan, eds., *A Biographical Directory of the Indiana General Assembly, Volume 2, 1900-1984* (Indianapolis, 1984), 291.

<sup>16</sup> *Huntingburg Independent*, September 28, October 5, 1912; *Pike County Democrat* (Petersburg), May 2, 9, 1913; *State v. Alisa Bledsoe* Case File, Pike County Court House, Petersburg.

<sup>17</sup> Bledsoe Case File, May 1, 1913.

<sup>18</sup> Ibid., May 7, 1913.

<sup>19</sup> Ibid; *Pike County Democrat*, May 9, 1913.

<sup>20</sup> Ibid., August 27, 1915. According to this item in the newspaper, Carl left for Wabash College on August 23, where he planned to pursue the “classical course of study.” A related story in the same issue of the paper commented on the large number of Pike County students—24—that were college bound that year. A few years earlier, if 3 or 4 students left for college, that would have been “rather remarkable.”

<sup>21</sup> Author Interview with Carl M. Gray, September 9, 1988.

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<sup>22</sup> Ibid.; Author interview with Mable Gray Benjamin, Dec. 17, 1991.

<sup>23</sup> *Pike County Democrat*, April 21, 1916. At this time, Pike County had only 74 miles of graveled roads, a small percentage of improved roads in the state. When state automobile tax receipts were distributed to the counties based upon the improved roads in the county, Pike County received \$1,799.

<sup>24</sup> Ibid., August 31, 1917. See also Carl's Military Service Record, World War II Collection, Indiana State Archives, Indianapolis.

<sup>25</sup> Entry for Saturday, November 17, 1917, Civil Order Book No. 15, June 1916-April, 1918, Pike Circuit Court Files, Courthouse, Petersburg.

<sup>26</sup> S. Hugh Dillin, "The Origin and Development of the Indiana Bar Examination," *Indiana Law Review*, 30 (Winter, 1997), 391-394.

<sup>27</sup> Author interview with Carl M. Gray, March 22, 1988.

<sup>28</sup> Ibid.

## **Chapter 3**

### **Getting Started, 1920-1926**

“My [first] partner was an SOB, but I learned a lot from him.”

Carl M. Gray, 1988

Petersburg was a good place for Carl Gray to take up the practice of law in 1920. The seat of government for Pike County since its inception, and a coal-mining and farming center, the small town was then near the height of its prosperity and population. Carl Gray's immediate family had lived in the county since 1900, in Petersburg since 1915, and Carl was already well known and respected around town and throughout the county. His father, soon to leave Petersburg for employment in Evansville, had been an active, successful political leader in this area, so there was a legacy of good will towards the former county auditor's son. Carl himself recalled his first overt political act as a boy was to tag along with his father on various campaign swings through the county. By 1920, moreover, the Petersburg bar was in need of good

new talent, and Carl soon made the most of the opportunities available to him.

Carl's parents, however, were not around to give advice, at least on a regular basis, to their son as he set about trying to carve a place for himself in the professional and social life of the community. Shortly after father John D. Gray took up residence in Evansville (in southwestern Indiana), mother Louise R. Gray, in 1921, moved to Hammond (in the extreme northwestern part of the state), where two of her children were employed. The eldest daughter, Merle, a graduate of Indiana University, after briefly teaching in Petersburg (second and third grades) had obtained a teaching job in the public school system of Hammond, where she quickly established herself as a teacher and textbook author (in mathematics), eventually rising to the position of director of elementary education in her city. Mrs. Gray lived with her daughter for many years, where at first a younger son, Glen, also lived and worked. In 1923, however, Glen left Indiana, enrolled in a graduate program at the University of Kentucky, and went on to a successful career as an engineer.

In order for Carl Gray to establish himself as an attorney and build a practice, several things, all of which required money, were needed. Carl initially attempted to borrow some money from the First National Bank, but his application was denied. It obviously was a source of satisfaction to Carl, many years later, that he became the majority stockholder and president of this same bank. At the moment of his need for overhead capital, however, Carl resorted first of all to a small loan obtained from a fellow attorney and long-time resident of Pike County, Samuel H. Dillin,<sup>1</sup> and then to a larger loan granted by an Evansville bank. Moreover, in order to get into an office already equipped with the necessary books and supplies, Carl rather promptly formed a partnership with W. E. Cox of Jasper. Cox was a former member of Congress, having represented Indiana's Third District for six successive terms, from 1907-1919. Following this, he resumed his law practice and also worked for a furniture manufacturing company in Jasper until his death in 1942.<sup>2</sup> Thus, by December 1920, the firm of Cox and Gray was born. Only two months later, a third partner, Edward W. Harris, joined in, creating Cox, Gray & Harris, but this lasted only until 1923. Carl Gray thereafter remained in private practice alone



until Edward Waddle, a World War II veteran, having served in the U.S. Marine Corps, became his employee in 1946, and advanced to partnership in 1948.

Judge Lester Nixon, a veteran Pike County politician and jurist, believes that his father was Carl's first client, when he consulted the new attorney regarding the sale of land. Carl himself remembered in 1988 that one of his early cases involved some former neighbors in Alford, a black family. He remarked that they must have thought I did a "pretty good job," because years later he handled an estate settlement for the same family. Carl further remembered an early jury trial he handled with Mr. Cox, who assigned Carl the task of drafting their side's proposed instructions to the jury. But when he presented them to his partner, "I was told, in no uncertain terms, that my instructions weren't worth a damn," so I had to redo them before Cox would submit them to the court. "My partner [Cox] was an SOB," Carl continued, "but I learned a lot from him."<sup>3</sup>

Another learning device—perhaps, though, this included the case with the flawed instructions--was Carl's almost immediate

confrontation with the seamier side of life in cases involving assaults, divorces, and various immoralities. Moreover, as early as 1921, only months after entering the practice of law, Carl became an assistant prosecuting attorney and as such dealt not only with routine appearances for the state in divorce suits and various misdemeanor charges, but also with more serious felony matters, including rape and murder, either as prosecutor or, sometimes, while representing the defendant. In December 1921, he represented the state in a divorce case, but in February 1922, in his capacity as a private attorney, he successfully defended a man accused of rape.

The alleged victim, a female child under the age of 16, charged that she had been raped on February 25, 1921. The grand jury investigated, hearing from the alleged victim and three other witnesses, and returned a true bill against Carl's client. That the young attorney may have resorted to technicalities in his spirited defense is indicated in a Cox and Gray memorandum: "The state having charged in its indictment that the defendant committed rape on . . . a female child and the state having failed to offer any proof

as to whether or not [the plaintiff] was a female child the State has thereby wholly failed to make out its case." Accordingly, the jury returned a verdict of "not guilty."<sup>4</sup>

Other typical charges preferred against various Pike County citizens by the prosecutors in 1922 involved gambling, selling cigarettes to minors, making or selling intoxicating liquors, visiting houses of ill fame, allowing minors to play pool, being a "lazy husband," and rape and sodomy. On the other side of the table, Carl also represented a habitual drunkard, pleading him guilty to "public intoxication, third offense," and accepting a fine of \$10, along with a sentence of thirty days at the Indiana State Farm.<sup>5</sup> Indeed, Carl quickly developed an extensive practice as a private attorney. According to Judge Marvin Stratton, who early in his career had been one of Carl's associates, the young attorney "would accept any case that walked in the door," and this remained Carl's habit.<sup>6</sup>

In 1922, barely a year after he started his practice, Carl was involved in a sensational double-murder trial. He had indeed come a long way since 1913, when he had been a fascinated spectator at

a similar trial in the identical court. Now, his firm of Cox & Gray had been retained to assist Prosecutor Stanley E. Krieg in making the case for murder against one Otho Dorsey. Carl's involvement in this case included having custody of the blood-stained clothing of one of the two victims, which he had stored in the trunk of his car and shown to his younger sister, Mabel, a horrifying sight that remained a vivid memory for her nearly sixty years later. Perhaps the fact that Carl by this time had already received the Democratic nomination for Prosecuting Attorney (May 22, 1922), and having no opponent in the general election was assured of election, played a role in his appointment to this case.

The Dorsey case began with what the local newspaper called “one of the most horrible [and] mysterious crimes ever to occur in Pike County.” In mid-February 1922, on Turner Willis’s farm near Cato, Willis and his brother-in-law, Luke Bemis, were clearing timber on the land. When the men failed to come home one evening, Mrs. Willis asked her neighbors for help in searching for them. The two men were quickly found, lying some three feet apart, with one man holding a blood-stained axe, the other a bloody

sledgehammer. Each man had been struck twice with a blunt force object. Both men still had their work gloves on, but they were free of blood stains. Of course news of a double homicide traveled quickly, and soon hundreds visited the scene of the crime. Most observers believed that only one man had committed the assaults, and afterwards had arranged the bodies to suggest they had fought and slain each other.<sup>7</sup>

Within a few days, Otho Dorsey was arrested, based upon the circumstantial evidence, and jailed in nearby Washington. Dorsey, a 32-year old farmer and Willis's neighbor, was eventually indicted on murder charges after an eight-day long grand jury investigation, but then he was freed on bond, the judge noting that the evidence was circumstantial and not strong. Tried in the fall in a sensational, highly volatile, and well-attended trial, led by Prosecutor Stanley Krieg and assisted by Carl M. Gray, the jury required only five hours in order to arrive at its "not guilty" verdict. This decision, according to press reports, had been anticipated by onlookers, "there being insufficient evidence to convict," and the failure of the prosecuting team was not held against them. It served, however, to

introduce Carl to the limelight of public attention and close scrutiny relatively early in his new career.<sup>8</sup>

His partnership with a Dubois County man also had the advantage for Carl of making him better known to the people of the county, and served him well when he decided to seek election as the prosecuting attorney for both Pike and Dubois counties in 1922. As early as 1921, Carl was described as a rising new star in the Democratic ranks, and he was selected to represent his district in a convention in Evansville and to give one of the five-minute speeches that highlighted the meeting.

Less than two months following the conclusion of the Dorsey trial, Carl Gray was elected prosecuting attorney for Pike and Dubois counties (as well as a delegate to the state Democratic convention), thus beginning a short but effective career in elective politics that included one four-year term in the Indiana State Senate. In his first race, despite the lack of a Republican opponent, Carl campaigned vigorously throughout both counties, trying to let himself be seen and become known. In the final days just before the election on November 7, Carl held Pike County meetings in

Stendal (Wednesday), Muren (Thursday), Spurgeon (Friday) and Otwell (Saturday), before winding up his campaign in his Dubois County home town of Portersville. Following his election, a Boonville newspaper editor in neighboring Warrick County advised his readers to “keep your eyes” on Carl M. Gray. “He is clean and able and a ‘fighter for his beliefs,’ as an old friend of ours used to say.” The editor also predicted “better and higher things” for him later, and thought that he “will make a splendid record as prosecuting attorney.”<sup>9</sup>

Indeed, Carl did perform well as prosecutor, even though the years of his service were difficult ones for the country. It was, of course, the Prohibition Era, and Prohibition was the law of the land from 1920 into 1933. It was also the period in which the Ku Klux Klan, under the evil leadership of D. C. Stephenson, was especially strong in Indiana. Stephenson, a southern-born man who came to Indiana and first settled in the Evansville area in 1920, used the existing Horse Thief Detective Association as the vehicle to enforce his views and threaten people.<sup>10</sup> Another big issue facing the young prosecutor was the local dog tax that many Pike County residents

had neglected to pay. In 1924, Gray filed suits against 115 dog owners for unpaid dog taxes.

On the liquor issue, however, Carl, without being overly aggressive, tried to enforce the law evenly and fairly. When the police made arrests for Volstead Law violations, Carl carried out his duties in prosecuting the accused. Having selected fellow attorney Ben Garland of Huntingburg as his deputy in April 1923, however, he terminated the appointment in October because, according to Garland himself, the deputy “was enforcing the law too strictly.” Moreover, Garland had connections with the Horse Thief Detective Association, a front organization for the KKK that became a vigilante group ostensibly trying to uphold moral values, but actually serving to intimidate young men and women in their parked cars along various “lover’s lanes” between Winslow and Petersburg. The vigilantes also occasionally stopped cars to search for alcohol and raided gambling houses. Carl disapproved of the HDTA’s tactics and in various ways, in his own words, “stood up to [the Klan]” and its nativist, white-supremacy ideology.<sup>11</sup>



Carl personally was a man of integrity, of high moral standards, and a church-goer. He was a life-long member of the Main Street Presbyterian Church in Petersburg, and for many years taught the men's Sunday School class there. On the other hand, when asked if he personally was a "wet" or a "dry," he readily admitted that, even in the Prohibition years, he "took a drink when he wanted to, so he supposed he was a wet."<sup>12</sup>

At the end of his years as a prosecutor, while campaigning again for a new and higher office (membership in the state senate), the local press summarized Gray's standing by noting that "he is well known . . . [and was] a successful prosecutor." As such, "he enforced the laws and had "won more convictions" than any prosecutor who served a like period.<sup>13</sup>

Carl stated that he had declined renomination as prosecutor because his private practice, which he had not completely abandoned while in office, was "more lucrative" and more satisfying—he just "loved being an attorney."<sup>14</sup> Nevertheless, when the opportunity to obtain a much higher, more prestigious political position came along, Carl could not resist. Consequently, during

the fall of 1926, Gray was elected to the Indiana State Senate, which meant serving in the biennial sessions of 1927 and 1929. Thus, at the end of the decade and a full ten years in the practice of law, along with dabbling in state politics, Carl seemed to have a choice of careers before him.

## Notes to Chapter 3

### Getting Started

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<sup>1</sup> Author interview with Judge S. Hugh Dillin, April 5, 1988. The judge was the son of Carl's benefactor and had begun his law practice in partnership with his father. At the time of this interview, the judge, a former neighbor of the author in Petersburg, was a member of the bench at the Federal District Court for Southern Indiana in Indianapolis, having been appointed to his post by President Kennedy in 1961.

<sup>2</sup> *Biographical Directory of the American Congress, 1774-1960* (Washington, D.C., 1961), 1026.

<sup>3</sup> Author interview with Carl M. Gray, March 22, 1988.

<sup>4</sup> April Term, 1922, Criminal Order Book No. 3, 1916-1922, Pike Circuit Court, Courthouse, Petersburg, Ind.

<sup>5</sup> Ibid., Book 4, 1922-1926; Civil Order Books No. 19, 20 and 21. The numerous entries in both of these books (and others later on) indicate that Carl Gray was kept busy both as a prosecutor and as a private attorney. Dozens of cases were handled by him every year, and in 1927, when he was required to be away in order to attend the Indiana General Assembly as a state senator, the local newspaper listed thirteen of his cases then pending in the Pike Circuit Court that had to be continued until the senator/attorney returned in March.

<sup>6</sup> Author interview with Judge Marvin Stratton, March 17, 1991. Stratton, who served as judge of the circuit court in Petersburg, was once one of Carl's law partners.

<sup>7</sup> *Pike County Democrat*, June 23, September 22, 1922. Following his trial, Dorsey (1889-1960) resumed his life as a carpenter and building contractor in the Cato and Petersburg areas. The biographical sketch about him in Ruth Miley McClellan, *Pike County History* (1976), 404, makes no mention of the trial.

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<sup>8</sup> *Pike County Democrat*, September 22, 1922.

<sup>9</sup> Quoted *ibid.*, October 17, 1922.

<sup>10</sup> The HTDA, originally established by the Indiana General Assembly in 1852, authorized this group of “voluntary, amateur constables to apprehend horse thieves and other criminals.” It was revived in the 1920s and served as the law enforcement agency of the Ku Klux Klan. For more information on this organization and its and other Klan activities in Indiana in the 1920s, see James H. Madison, *Indiana Through Tradition and Change: A History of the Hoosier State and People, 1920-1945* (Indianapolis, 1982), 49-50 and ffg.

<sup>11</sup> Author interview with Carl M. Gray, March 22, 1988. For a good account of the Klan’s origins in the 1860s, its revival in 1915, and its subsequent history, see David Chalmers, *Hooded Americanism: The History of the Ku Klux Klan* (Durham, N. C., 1987).

While reminiscing about his years as prosecutor in 1983, Carl joked about a special problem, saying “the only way you could convict anyone in Dubois County for violating a liquor law was if they vomited on the sidewalk. They thought then they were wasting liquor.” More seriously, however, he pointed out that his salary was “\$500 a year, plus \$10 for a felony conviction, but if it was a violation of the liquor law, you got \$25.” This helps explain why Carl served only one term as a prosecutor. Zimmer, “The Law According to Gray,” *The [Dubois County] Saturday Herald*, October 22, 1983.

<sup>12</sup> Hugo C. Songer, *The History of Huntingburg [Indiana]* (n. p., n. d.), 187-88. I am indebted to Judge Songer of the Dubois Circuit Court for sending me the pages in his book that refer to Carl Gray’s years as that county’s prosecuting attorney.

<sup>13</sup> *Pike County Democrat*, October 22, 1926.

<sup>14</sup> Author interview with Carl M. Gray, March 10, 1988.

## **Chapter 4**

### **Senator Carl M. Gray**

“[Although] in the minority party, [Senator Gray] has taken a prominent spot in every bit of important legislation.”

Clipping, Carl M. Gray Papers, Petersburg

**W**hen Carl Gray decided to become a candidate for the Indiana State Senate representing Pike and Gibson counties in 1926, he was the first person from the district in either party to do so, and he parlayed this early advantage into an easy victory in November. Obviously quite eager to return full time to his law practice, the seductive pull of life in the political realm was also very strong. Carl had continued, as his single term as a prosecutor drew to a close, to speak at political rallies, serve on various committees within the state and local Democratic party organizations, and to develop a number of firmly held positions on the troubling issues facing the state and nation. So he was ready for the job when he was sworn in as a member of the Senate, representing in addition to Pike County the adjacent

county to the south, Gibson, where he was already well known as an attorney who had tried many cases in Princeton, where the Gibson Circuit Court was located.

The Indiana General Assembly that was elected in 1926 was a special one in the political history of the state, for it marked the 75th meeting of Indiana's citizen legislators under its second (and still existing) state constitution. The *Indianapolis News* took special notice of this anniversary session upon welcoming its 150 members to the capital city in January 1927. According to its analysis, the legislature was composed primarily of farmers, with lawyers being the second largest group, most of whom who had, in fact, been there before. Thirty-eight of the 50 senators were "veteran" legislators as were 45 members of the 100-member House of Representatives. Moreover, the average age of the senators was only 49, of the house, 47.<sup>1</sup> This statistic, however, brought Carl Gray into the spotlight of attention before the session began, because at age 31, eighteen years below the average age of his colleagues, he was the youngest member of the Senate. He was also one of its few bachelors (5), a condition that changed shortly

before the first session ended, Carl's wedding, unannounced ahead of time, being an event that served to give even more attention to the young man from Pike County.

The *News* concluded its initial story about the 75th legislature by listing four "great issues" that were confronting it. The first one, rather obvious to all observers, was the lingering impact of "graft and corruption" that had marked the years in which Ku Klux Klan "Grand Dragon" D. C. Stephenson had virtually controlled the state. (Indeed, the previous legislature, elected in 1924 and meeting in 1925, was known as the "Klan Legislature.") But by the time the next legislature met in 1927 Stephenson and the Klan had been disgraced by the leader's conviction for murder and other exposures about the Klan's depravity. Still, its bitter legacy needed to be confronted. A second "great issue" was budgetary, and involved dealing with what appeared to be quite large requests, about \$4 million in total, from the state's public colleges and universities for financial assistance. A third issue concerned repeal or other action regarding the state's direct primary law, which had been enacted in 1915 but had failed to resolve the matter, and finally, the *News*

listed as a “great issue” the need to amend the law regarding the powers of Indiana’s public service commission.<sup>2</sup>

There were, of course, other less pressing issues to be considered by the legislature as well, including a response to repeated calls for a new constitutional convention, the need to recodify the state’s criminal laws, a growing demand for junior colleges throughout the state, and of course there was the continuing issue of Prohibition. One aspect of this latter issue was a strong push from some quarters, calling for a law that would permit the sale of alcohol “for medicinal purposes” once a person had received a doctor’s prescription for it. (Even Governor Jackson [1925-1929] had recently been able to obtain “medicinal whiskey,” with the assistance of his attorney general, for the treatment of his gravely ill wife.) These proposals, however, as might be expected, were vigorously opposed by E. S. Shumaker, the dynamic head of the Anti-Saloon League and other temperance groups within the state, who credited prayer, not alcohol, for Mrs. Jackson’s recovery.<sup>3</sup>



Interestingly, too, this issue of the newspaper also carried a story about Indiana novelist and political activist (on the Democratic side of the aisle) Meredith Nicholson, who had recently addressed the Caroline Scott Harrison Chapter of the Daughters of the American Revolution (DAR) on the general topic of the need for “more good local government.” This was to become a theme of Senator Gray during his first and only term as an Indiana senator.<sup>4</sup>

In pursuing various issues of his own, one in particular that he had developed in concert with other attorneys over the previous two years, Carl Gray had a plan to abolish the state board of pardons, and return its power over an inmate’s future back to the court which had originally imposed sentence. This stance was in keeping with the general Democratic position of favoring more local control in all areas of life, and of resisting the Republican agenda in recent years that involved greater centralization of power, supposedly a more efficient use of resources, and the creation of a number of boards and commissions headquartered in Indianapolis that wielded often arbitrary power over the lives of citizens. As Professor James H. Madison has noted in his detailed study of

Indiana during this period, a time in which the Republican party controlled the statehouse, “Democrats professed as their cardinal principle a strong allegiance to local government and a distrust of centralization and power at the state capital.”<sup>5</sup>

Surprisingly to most observers, the youngest member of the Senate played a very prominent role during his first session, which lasted from January 6 to March 8, 1927, although Judge Clarence Dearth’s impeachment trial following the Senate’s regular session required additional meetings from March 21 to April 2, when the judge was acquitted. (Carl’s second session as a senator ran from January 10 to March 11, 1929.)

During that first session, Carl served on seven committees, including Corporations, Roads, Railroads, and Criminal Code. He also was appointed to the Enrolled Bills, Military Affairs, and Soldiers and Sailors Monument committees. As such, he authored or co-authored a number of bills, even though as a member of the minority party the likelihood of successfully sponsoring legislation was slim. But that status did not silence his strong voice in advocating his position on many issues. Indeed, he helped push

through S.B. (Senate Bill) 11 which, through an amendment to the Workmen's Compensation Act, increased the maximum weekly payment from \$13.20 to \$16.50, a 25 percent jump, and which also extended the period for medical services from 30 to 90 days.<sup>6</sup> There was also a bill affecting the jurisdiction of the courts, and one that increased the power of townships to improve their roads, and one, adopted through an "emergency clause," that authorized Oakland City College in Gibson County to erect a "school building" by means of a voluntary association, not new taxation. Additionally, another measure, one that Carl liked to talk about long afterwards, was a bill that increased state legislators' pay from \$6.00 to \$10.00 a day, effective immediately. This was not quite the first thing he did as a senator, as he sometimes boasted, but it did come early in the session and raised the rate of pay for the first time since 1881.

Soon after the pay bill was adopted, Carl "led the attack," according to an Indianapolis newspaper, on the state tax board while urging passage of the Hewitt bill, which would abolish the board's appellate jurisdiction regarding bond issues. He declared that the "cities of the state are in open rebellion against the boards

and commissions in this statehouse. They are demanding local self-government. It is a sad state of affairs when the people who raise the money for improvements cannot determine the materials they want to use and the specifications. The tax board is exercising autocratic power and must be curbed.” Three days later Carl returned to this issue in a response to a statement by the chairman of the tax board. Carl opened by attacking the “arbitrary power of the state tax board,” and said that “the most damnable lobby . . . in this state comes from the statehouse and . . . members of the state boards and commissions. They don’t want us to exercise independence in our actions. . . . Unless we get busy and assess the corporations of the state at their true cash value, as we are assessing farm lands, we won’t get relief until we shear the tax board of its arbitrary power.” Given this impassioned plea on behalf of the Hewitt bill, the Senate voted that day to adopt it, but three days later that action was repealed and the bill failed.<sup>7</sup>

A few days earlier Gray had introduced a bill of his own to abolish the state board of pardons, placing instead “all recommendations for executive clemency [in] the court of original

jurisdiction.” Later he supported another bill to limit the authority of the state board of accounts. He heatedly charged this board with “usurping power” and misusing its authority. “It is a matter of practice,” he stated, “that the board can approve or disapprove of the materials which a local tax unit wishes to use in its improvements,” even bringing “indictments against engineers and construction managers without even looking at the specifications.” In a reply to Senator Gray, Senator Harlan (R, Wayne County) stated that it seemed to him that “Senator Gray would be pleased to abolish every board and commission” in the entire state.<sup>8</sup>

Carl did not specifically deny the senator’s charge, and instead went into an explanation of his reasons for opposing the parole board. Carl declared that “relatives and attorneys for the prisoners appear before the state body, whereas the State is not represented by counsel.” Action on this “Gray bill,” however, was sidetracked in favor of a bill passed in the house “that abolished the State Board of Pardons, but vested its powers in the boards of trustees of the various penal institutions.”<sup>9</sup>

Judging from the press coverage of the 1927 legislature, the most important bill Gray promoted was S.B. 11, which dealt with an issue, workmen's compensation, introduced by Governor Jackson in a speech when the legislature convened. He also received substantial front-page coverage regarding the parole board bill and a controversial measure seeking to further regulate public utilities. This one led Carl to speak out about "attempted intimidation" by the press, and he boldly announced his total disdain for such attempts. "I care nothing about that. I am not going to be controlled on my vote by any newspaper."<sup>10</sup>

Although Carl had captured many headlines in the Indianapolis newspapers because of his leadership and outspokenness on the Senate floor, his private life also received due notice at the time of his marriage. In February, following a long courtship with the beautiful and accomplished Eulala Myers, evidently during one of the few lulls in his busy legislative activities, Carl asked for her hand in marriage. Miss Myers accepted at once, and the two married on Saturday, February 26, 1927, at the Tabernacle Presbyterian Church in Indianapolis, the Reverend

Ambrose Dunkel presiding. Only a few friends and family members attended the private ceremonies.

The new Mrs. Gray was the daughter of Dr. and Mrs. Ashley Myers of Monroe City, Indiana, a small Knox County village on the road between Petersburg and Vincennes. The petite young woman was a graduate of the Lindenwood School for Girls in Springfield, Missouri, and of the Indiana State Normal School in Terre Haute. She also attended Columbia University in New York City before accepting a position to teach “domestic science” at a junior high school in Vincennes,

When the newly wed senator first appeared on the Senate floor following his unannounced wedding, he was teasingly called to the podium by the presiding officer, Lt. Gov. F. Harold Van Orman, and “chastised” for not keeping his colleagues informed “on matters of major importance.”

As reported in the Indianapolis press, Lt. Gov. Van Orman continued. Now, he said, “I understand that you are married. Can that be true?’ ‘Yes, sir,’ Senator Gray stammered, blushing. . . . Cries of ‘speech’ came from the floor of the Senate. . . . [and Van

Orman agreed.] ‘I can’t even talk now,’ Senator Gray answered and backed [away].” Then, in lieu of orange blossoms because of the short or no notice, Lt. Gov. Van Orman presented two oranges to Carl, along “with instructions to pass them on to the next eligible bachelor (one of only four) in the Senate.” Senator Will Brown from Lake County was the bemused recipient of the oranges.<sup>11</sup>

Following this moment of frivolity, the Senate turned immediately to a consideration of how to proceed following the impeachment by the House of Representatives of a sitting circuit court judge up in Muncie. No one had been impeached by the General Assembly for 92 years, but now, based upon an alleged “abuse of power” by Judge Clarence Dearth upon George Dale, the outspoken editor of the *Muncie Post-Democrat*, such action had been taken. Dale had a long history of disagreements with the judge, but the precipitating deed was his criticisms of Judge Dearth regarding his favoritism to Delaware County members of the Ku Klux Klan.<sup>12</sup> The impeachment articles charged Judge Dearth with “corruption and other high crimes,” including suppression of freedom of the press and “irregular” jury proceedings in his court.



The leaders of the Senate decided to appoint a 5-member committee of its leading members to study the matter and make a recommendation to the Senate on how to proceed. Carl Gray was one of the Democrats appointed to this committee (the other one being Curtis Shake (D-Knox County), later a member of the Indiana Supreme Court; the three Republicans were William Evans of Indianapolis, William Hodges of Gary, and Denver C. Harlan of Richmond. Collectively this group was said by the *Indianapolis Star* to consist of “five of the six ablest men in the state senate.” Their recommendation, promptly submitted following a day’s meeting and accepted with only one “no” vote, was to proceed with a trial beginning March 21, and to follow the rules for such proceedings used by the United States Senate. The slight delay following adjournment of the regular session was caused by the need to give the defendant at least ten days to prepare his defense.

The lone dissenting vote was by Senator James J. Nejd1, a Republican from Lake County, who stated in a lengthy defense of his position that he believed, first of all, that the state’s impeachment statute, adopted in 1897, was unconstitutional and,

secondly, that the issue should be handled by the courts in Delaware County. His final point was that a Senate trial, expected by some to last from 30 to 60 days, would be expensive, requiring per diems for the senators, witnesses, and stenographers. Nejdí was answered immediately by several senators, including the one from Pike County, all of whom believed that the impeachment statute was the law of the land and that it was the Senate's duty to act according to its mandates. Senator Gray, in his concurring statement, simply said that "the law is clear that the Senate should try the case on the law and the evidence."<sup>13</sup>

When the trial began on March 21, there were seven charges preferred against the judge, and after he and other witnesses were questioned, when the votes were taken, not one of the charges received the required 34 votes (two thirds) in order to convict and these unusual proceedings concluded on April 2. Senator Gray had voted to convict on six of the charges (1-5, and 7), and made no public comment about the outcome.<sup>14</sup> Clearly, though, he was happy to see the trial end and was eager to return home, start his

life as a married man, and resume the practice of law full time until the next meeting of the Indiana General Assembly in January 1929.

When that new session began, Carl, now a veteran senator himself and no longer the Senate's youngest member, two younger newcomers having been elected in 1928, continued to advocate his position and to introduce a large number of bills, eighteen in all, that underscored his commitment both to local self-government and the development of his area of the state. His seven committee assignments had changed somewhat probably at Carl's request, as he added Banks and Judiciary B to the list. He remained on the important Corporations and Railroads committees; the final three being the Elections, Rights and Privileges, and Telephones and Telegraphs committees.

In other activities that reflected his interest in southern Indiana, Carl introduced S.B. 117 to authorize a bond issue for constructing the "Lincoln Bridge" over White River between Knox and Pike County. It is believed, as the bill's name indicates, the bridge was at the location where the Lincoln family crossed the river on its way to Illinois in 1830. Interestingly, in 1991, this bridge

became known as the “Carl M. Gray Bridge,” one that Carl crossed repeatedly on business trips to Vincennes and during his courtship of a Knox County woman. In this session, too, Carl supported a non-binding “continuing resolution” that endorsed building the National Lincoln Memorial Highway from Hodgenville (Lincoln’s birthplace), Kentucky, to Vincennes, Indiana, where Lincoln crossed the Wabash River into Illinois, and requested the federal government to undertake its maintenance.

Early in this session, too, Carl, perhaps following up on his experience as a prosecuting attorney, also fathered the so-called “college bootlegger’s” bill that, according to historian Justin Walsh, imposed “drastic penalties (including life imprisonment on third conviction) on those who sold liquor to minors.” Carl, however, as a member of the minority party, could not get the bill passed until Republican Ralph W. Adams from Shelbyville “substituted his name for Gray’s as sponsor.”<sup>15</sup>

Based on an analysis of Indianapolis newspapers during this two-month legislative session of 1929, there were three main issues that served to keep Carl Gray’s name before the public. These were

an old age pension bill, a continued debate about the direct primary, and a proposal to have a city-manager government for Indianapolis, a concept that Carl detested as much or perhaps even more than unions for school teachers.<sup>16</sup>

In very modern-sounding political squabbling on the first issue, critics of the old age pension bill labeled it “socialistic” and “a terrible raid upon the public treasury,” and an act that “penalizes thrift” while “rewarding drunkenness, laziness, and licentiousness.” Carl, however, praised the bill as a “worthwhile humanitarian measure,” which prompted Senator Harlan to express his “surprise at Senator Gray advocating this measure since he is so parsimonious about increasing taxes.”<sup>17</sup>

When discussing whether to return to the convention system for nominating candidates for congress, and using the Australian (secret) ballot system, Senator Gray called the plan “a step toward the backwoods,” and then launched into an attack on the Harding administration that had “resulted from a hotel room parley at the 1920 Republican national convention. There has been a long

parade,” he asserted, “of public officials from Washington City to the penitentiaries as a result of the 1920 convention.”<sup>18</sup>

His most publicized effort, though, concerned the fight he led against establishing a “City Manager Program” in Indianapolis. Carl called such a plan “repugnant to our form of government,” and objected strongly “to bring[ing] in a man from some other state to administer the government” here; in fact, he said, such activity very well may be unconstitutional. Carl concluded his objection by saying that this would mark the end of political parties in the state by creating “nothing less than a monarchy. We fought the war of the revolution to get away from monarchy. The city manager form of government is a disgrace to all Hoosiers.”<sup>19</sup> Whether or not Carl’s argument was persuasive to his listeners, Indianapolis did not adopt the city manager system, and Carl, as soon as the 1929 session of the legislature adjourned sine die, returned home.

Soon thereafter, Carl announced that his political career was over, that he intended instead to devote all his attention to his law practice. There is little doubt but that the young attorney could have remained in the Senate if he so desired, and that a life in

politics might have led to bigger and better things. Moreover, given the political climate in the nation in the 1930s, a young, vigorous, articulate leader in the Democratic party such as Carl Gray might well have contended for some of the state's highest offices but, as Carl later put it, he simply "couldn't afford" to remain in politics. Whether he meant this in a financial sense or, more likely, in a personal way is not absolutely clear, but it is known that the new Mrs. Gray was not enthusiastic about her (and her husband's) political friends and associates and that she much preferred living a more refined life in her adopted hometown of Petersburg. And Carl was eager to do everything in his power to please his wife, whom he adored. His pet name for her was "Pocahontas," meaning that, like the Indian princess, she, too, was a princess. Over the years, however, this name was shortened to the rather inelegant-sounding "Poke." Still, Carl and his "Poke" did settle in as one of Petersburg's leading families and found a place very near to the top of the social register. This leading position socially in the city was solidified in 1941 when the young couple moved from their rather modest home on Twelfth Street, located in the northwest sector of Petersburg, to a fine new home on the eastern outskirts of the city that became

known as “Gray Acres.” Soon afterwards, when the county assessor arrived in order to place the Grays’ new home on the tax rolls, Carl drew the man aside and privately requested that he evaluate their home at the highest amount in the city so that he would know (and then perhaps could tell others) that he paid the largest amount of property taxes in the community.<sup>20</sup>

Carl’s decision to leave elected politics in 1930 had many dimensions but at least his brief tenure in public office had significant and life-long ramifications. He came to know some of Indiana’s most important political (and business and educational) leaders at that time, many of whom had great impact on Carl’s life. To give just three examples, Carl first met Herman B Wells, later the decades-long legendary leader of Indiana University, in the hallways of the Indiana State Capitol. Wells, a banker’s son, in the early 1930s was serving as a lobbyist for the Indiana Banking Association and Carl was a member of the Senate banking committee. He also served in the Senate with Curtis G. Shake, a Democrat from Vincennes who later became an Indiana Supreme Court justice, and before whom Carl argued many cases. Marion County’s Judge John



B. Niblack, like Shake also from Knox County, was one of Carl's colleagues in the Senate and their bipartisan friendship continued throughout their respective long careers. It can be concluded that, as the local newspaper editor stated, Carl's retirement from politics was a "distinct loss to his party," but it was also the loss of great opportunities for Carl.<sup>21</sup>

Another change in Carl's life through the latter part of the 1920s was his decision to stop smoking (cigars). According to a retrospective column about this Dubois County native in a Jasper newspaper in 1982, Carl had set a "hectic pace for himself" as an attorney, "capping off his courtroom victories with a good stout drink and a big cigar," but upon his doctor's advice, he stopped smoking in 1929 because the "cigars were affecting his vision." He did not, however, "give up the spirits" and there are countless stories over the years to indicate the subterfuges Carl employed, probably not totally successfully, to conceal his drinking at dinners and parties he attended with his teetotaling wife.

The Jasper newspaper account concluded with a story about Carl handling of a prohibition case in Jasper. He represented

several brothers accused of not only prohibition law violations but also of shooting at an Internal Revenue officer. The brothers were found guilty by the judge, and he asked Carl (perhaps because of his experience as the county prosecuting attorney) to recommend sentences for the brothers. Carl proposed 90 days incarceration for the shooter, but no jail time and no fine for the others. The judge agreed but later told Carl that he had come close to giving a maximum sentence to the gunman. When Carl asked why he didn't, the judge replied, "Because he was such a damn poor shot!"<sup>22</sup> Of course, this was a story that Carl told many times, probably leaving out the point that his father had been Pike County's first internal revenue officer.

As indicated above, Carl had never abandoned his legal career while also serving as prosecuting attorney and state senator. During those years the young attorney handled a large number of cases but, regrettably to himself, had to decline some opportunities at bar. Now, in 1930, Carl could become a full-time attorney and also decided to remain in Petersburg, declining offers to go

elsewhere (Chicago was a possibility). And he remained a Petersburg attorney for another fifty-nine years.

## Notes to Chapter 4

### Senator Carl M. Gray

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<sup>1</sup> *Indianapolis News*, January 3, 1927.

<sup>2</sup> Ibid. On the matter of the direct primary law, considered “odious “ by leaders in both political parties, it was finally repealed by the 1929 legislature, the second one in which Carl Gray served. See James H. Madison, *Indiana Through Tradition and Change: A History of the Hoosier State and Its People, 1920-1945* (1982), 35-36. This book is Volume 5 of *The History of Indiana* series, sponsored by the Indiana Historical Society and the Indiana Historical Bureau.

<sup>3</sup> For more details concerning medicinal use of alcohol by high government officials, see Jason S. Lantzer, “Edward L. Jackson,” in *The Governors of Indiana*, ed. Linda C. Gugin and James E. St. Clair (2006), 274-79.

<sup>4</sup>Nicholson, later called the “dean of Indiana’s authors,” was also known for his lifelong “boosterism” of all things Hoosier as well as for his participation in the political affairs of state and nation. Details about his life may be found in Ralph D. Gray, *Meredith Nicholson: A Writing Life* (2007), and in the same author’s edition of many of Nicholson’s writings. The book, *A Meredith Nicholson Reader* (2007), contains such essays as “The Second-Rate Man in Politics,” and “The Democratic Party in 1924,” 127-45, 175-91.

<sup>5</sup> Madison, *Indiana Through Tradition and Change*, 28.

<sup>6</sup> Carl pointed out, in his interview on mining at the IU Oral History Research Center in 1979, that his amendment to the Workman’s Compensation Law made me “a national hero as far as the coal miners were concerned,” and Carl soon became a “good friend” of John L. Lewis, the dynamic leader of the United Mine Workers. Interview of Carl M. Gray on the “Coal Industry in Pike County, 1920-1979,” by R. T. King, April 12, 1979, for the Indiana University Oral History research Project, Bloomington, Indiana. See especially pages 31-32 of the 60-page transcript of this interview.

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<sup>7</sup> *Indianapolis Star*, Feb. 19, 22, 25, 1927.

<sup>8</sup> *Ibid.*, March 4, 1927.

<sup>9</sup> *Ibid.*, Feb. 18, 1927.

<sup>10</sup> *Ibid.*, Feb. 19, 1927.

<sup>11</sup> *Ibid.*, undated clipping in the Gray Papers. The probable date, though, is March 1, 1927.

<sup>12</sup> For a detailed analysis of the longstanding conflict between the judge and the editor, including the important point that their disagreements involved more than Klan-related issues, see Ron F. Smith, "The Klan's Retribution Against an Indiana Editor: A Reconsideration," *Indiana Magazine of History*, 106 (Dec. 2010), 381-400. See also William Lutholtz, *Grand Dragon: D.C. Stephenson and the Indiana Klan* (1993), 79ff.

<sup>13</sup> *Indianapolis News*, March 3, 1927.

<sup>14</sup> *Ibid.*, April 3, 1927. Judge Dearth, while not convicted, nevertheless resigned his position at the court and took up again the private practice of law.

<sup>15</sup>

Justin E. Walsh, *The Centennial History of the Indiana General Assembly, 1816-1978* (1987), 312.

<sup>16</sup> In 1979, during a threatened strike by the teachers in Pike County, Carl went public with his strong views on this matter. See his two lengthy letters to the editor of Petersburg's *Press-Dispatch*, one of which reads like a lawyer's brief explicating the law on this subject, the other directly attacking the mistaken views of those advocating the strike. Undated copies of these published letters are in the Carl Gray Papers, Petersburg, and his correspondence files for 1979 confirm the year of their publication.

<sup>17</sup> *Indianapolis Star*, Feb. 7, 1929.

<sup>18</sup> *Ibid.*, Feb. 15, 1929.

<sup>19</sup> *Ibid.*, March 6, 1929.

<sup>20</sup> Interview with Carl M. Gray, March 10, 1988.

<sup>21</sup> "Gray Is Out of Politics," *Petersburg Press*, n.d. [1930], clipping in the Gray Papers.

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<sup>22</sup> *Jasper Herald*, March 10, 1989, in Simon Stemle's column.

## **Chapter 5**

### **Returning to the Law, Full Time**

“He possesses . . . a remarkably resourceful and versatile legal mind.”

I.U. President John W. Ryan, 1981

**W**hen Carl announced his intentions not to seek reelection to the Indiana State Senate, planning instead to devote all his time to his law practice, it did not mean that the young attorney who had blazed his way to the forefront in state Democratic politics by means of his powerful oratory and brilliance as an advocate would completely abandon all involvement in public affairs. Indeed, the local newspaper story that announced in big headlines that “GRAY IS OUT OF POLITICS” also commented on his “high standing at the bar” and mentioned a new state bar association recognition that he had received. Carl had recently been appointed by Indiana’s Republican attorney general, James M. Ogden, also the president of the Indiana State Bar Association, to the group’s Committee on Criminal Jurisdiction.

Two others on this four-member committee were Judge Will M. Sparks, recently appointed to the U.S. Federal Court of Appeals in Chicago, and Emsley Johnson of Indianapolis, a fellow attorney best known at that time for his role in obtaining a conviction, on murder charges, of Klansman D. C. Stephenson.<sup>1</sup>

Similarly, a few years later, Carl was one of only two attorneys from southwestern Indiana to serve on a regionally based “House Cleaning Committee” of the bar association that was charged both with making recommendations to the state legislature regarding ways to improve the conduct and the image of the state’s 4,000 attorneys and with offering suggestions about how to bring about the unification of them all in a single body committed to an improved administration of justice, simplified criminal court procedures, and the elimination of unethical practices within the legal fraternity.<sup>2</sup> Carl also remained active in local party politics, serving for a time on Pike County’s Democratic Central Committee, even accepting, like his father had done, the group’s chairmanship, serving from 1934 to 1936, and making occasional speeches to groups throughout the county and surrounding areas. At the same



time, Carl always took his role as a military veteran seriously and proudly, having immediately, upon his discharge from active service in 1919, joined the American Legion. In time he became the group's longest-serving member, fully 70 years, a service that included being Commander of Conrad Post No. 179 for four terms. Carl also belonged to the Kiwanis Club, often serving as one of its officers and usually assisting, whether in a leadership position or not, in entertaining speakers to the club and other visiting Kiwanians. Somehow, too, Carl always managed to find time for his church, the Main Street Presbyterian, of which both he and his wife were faithful members and financial supporters. For a time Carl taught a men's class in the Sunday School. Finally, in terms of his broader civic activities during the 1930s and afterwards, Carl was a member of the first Indiana State Police Board, to which he was appointed by Governor Paul V. McNutt.

Perhaps surprisingly to some, the Indiana State Police force, as it is known today, was created only in 1935 by the Executive Reorganization Act adopted in 1933 that was one of the hallmarks of the McNutt administration (1933-1937). By this act, among of

course many other things, three existing state law enforcement “bureaus” were consolidated into a single unit with a bipartisan governing board—two Democrats and two Republicans—in charge. Carl, of course, was one of the Democrats on the board—the other being Claude R. Crooks; the Republican members were Albert Rabb and Horace D. Norton.<sup>3</sup>

Among the board’s responsibilities was approving appointments to service, promotions, and awards; the board also had a role to play in equipment purchases and the location and construction of new state police posts or stations. Finally, the board had an important role regarding disciplinary decisions; punishments recommended by supervisors or post commanders could be appealed to the board, and its decisions were final.

It is interesting to note that Carl, although he served only one two-year term on the state police board, nonetheless gets credit for recommending two-way radios as standard equipment in the state police patrol cars, and for the establishment of a state police post in southern Indiana. When I asked Carl about this latter item, he

proudly pointed to the post in Dubois County, on SR 56, on the north side of Jasper, which of course is still in use there.<sup>4</sup>

There is also one sad event to note regarding the Grays in the 1930s. On March 14, 1936, Carl and Eulala had a son, whom they named Carl M. Gray, Jr., but the infant was stillborn, and the grief-stricken parents remained childless thereafter. Ironically, the child's gravestone, which stands adjacent to those of his parents in Walnut Hill Cemetery in Petersburg, bears the wrong date of birth. When I used the date found there (May 14, 1936) in looking for a press report on this incident and found none, I assumed that the Grays had somehow managed to keep this unpleasant news out of the paper. Later, however, while looking up something else, I came across the story about Carl, Jr., and learned the true date of his birth (and death).<sup>5</sup>

As noted above, Carl soldiered on following his bereavement and, despite all of his activities in the community and with various statewide organizations, he was soon immersed in the intricacies of his law practice. Carl's one-man (and one secretary) legal business picked up without a hitch following his extended stays in

Indianapolis during sessions of the Indiana General Assembly in 1927 and 1929. It is not possible, without access to Carl's business records and personal correspondence to spell out in great detail how this legal work progressed, but it is clear from the public records open to all that his work load was heavy and constant, even during the depths of the Great Depression in the 1930s. Perhaps the economic downturn at that time even increased his business, and Carl never turned any prospective client away in spite of his or her possible limited resources. It is known, too, that Carl's clients included most of the prominent businesses in town, such as the public utilities and the railroad, the New York Central, which passed through Petersburg. Certainly, too, Carl's reputation as a masterful attorney, especially his skills in dealing with juries in bringing them around to his point of view, grew quickly, and Carl was often called upon to assist other attorneys in nearby jurisdictions with particularly difficult and complex cases. He also served as the temporary judge in some cases when the regular judge was ill or necessarily engaged elsewhere. For example, in June 1935, Carl filled in as the judge in Boonville at the Warrick

County Circuit Court, and he proved to be as assertive and competent as a jurist as he was as an attorney.

When Mr. Gray initially approached me and sought my assistance in writing his memoirs, he apparently had in mind primarily a book that would include, in addition to the basic facts of his life, a number of his stories about humorous events and unusual things he had experienced in his more than sixty years as a member of the Pike County bar. Many of these stories Carl, whose reputation as a raconteur was almost as great as the one he enjoyed as an advocate, had told repeatedly to his friends, and now he wanted to have at least a few of them recorded for posterity. Unfortunately we did not manage to get many of these tales actually recorded in Carl's inimitable style, but I remember some of the ones he told me in passing, and some of Carl's friends, including Indiana Supreme Court Chief Justice Richard M. Givan, also told me some of Carl's favorite stories about his cases.

Two in particular stand out, and belong here in a discussion of his early years as a full-time attorney, for they relate to cases dating from the late 1920s or early 1930s. First there is the "Pookie"

Brown story, involving a man from Corydon who was accused of killing his wife, who was represented initially by Attorney Brown (Pookie), who turned to Carl for assistance in preparing a defense. Carl quickly developed a strategy for handling the case and of course shared part of it with his new client, an ex-con named Shry. But later in the week, long before the case could be heard and while the accused was being held by the local police, Carl received a call from them, asking him to come over and speak to his client because the man was creating such a nuisance to them and to the other inmates in the county jail. It seems that Shry was constantly talking, very loudly, moaning and groaning as he repeatedly said—as Carl, in his deep yet melodious voice, loved to mimic—“Oh, Rose, dear Rose, I love you, Oh, Rose, Rose, I’m so sorry,” and on and on. These constant cries of Rose’s name and Shry’s evident remorse over her demise were most annoying to the police, so Carl drove to English, the Crawford County seat, to meet the defendant again and to tell him to keep quiet. “Our plea is going to be *temporary* insanity, so you don’t need to act this way anymore!” And it worked. Shry quieted down, and the charges against him were reduced and settled in a plea bargain.<sup>6</sup>

In another case at about the same time but closer to home, Carl represented a man accused of being a chicken thief in Daviess County. Of course the evidence against this unnamed client was only circumstantial even though the supposedly purloined chickens were brought to court as evidence, and Carl was able to convince the judge that his client was really a man of good character and eventually all charges were dropped. When Carl explained this to his client, he said, “We’ve won! You’re free to go.” The man, somewhat confused, finally spoke up, “Thank you very much. But Carl, when do I get the chickens?”<sup>7</sup>

More substantively, and in cases fully documented because they were appealed to higher courts in Indianapolis where the records are stored, Carl Gray again became a frequent visitor to the capital city, now as a litigator, not a legislator. Evidently the first case that Carl took to the Indiana Supreme Court stemmed from an “assault” (a barroom fight) in Petersburg that occurred in July 1926. Carl had not handled the original jury trial there, but he was retained to appeal the judgment against Floyd McClellan. As was to become his habit, Carl prepared a lengthy brief (47 pages long) that

he filed with the Indiana Court of Appeals. Unsuccessful there, Carl then appealed his case to the Indiana Supreme Court. Despite the powerful arguments presented, this appeal also failed, as the court upheld the Pike Circuit Court's original decision. This may have been the case about which one of the appellate court judges remarked, "Carl has one hell of a brief, if he only had a case for it."<sup>8</sup>

Soon thereafter, Carl had cases worthy of the massive briefs he prepared for them. One developed following a tragic, double fatality car-train collision in Petersburg in 1932. The lawsuits stemming from this accident, given their duration through the decade, added to Carl's growing reputation as an able litigator willing to buck public opinion when necessary, and as an attorney who had mastered the mysteries of the law regarding jury trials, admissible evidence, and higher court appeal procedures, as well as the law of the land regarding incidents of this type.

It all began following a pleasant family and business homecoming party at Rock Cliff, a resort-type restaurant and night club located about a mile north of Petersburg, near the point where State Highway 61 (between Petersburg and Vincennes) crosses the



White River. Attending this party were a young married couple, Maurice and Margaret Warner, both only 18, along with several others associated with the Bement Gas and Oil Company, Maurice Warner's employer. Shortly before 3 a.m. on the morning of October 28, 1932, the band played its last dance, and the guests headed back along Highway 61 to Petersburg, where a railroad crossing marked the entrance into the main part of the city. En route, Maurice Warner, driving a small gas company vehicle, a Chevrolet light truck, and accompanied by his wife, passed a car occupied by two other party-goers. As the Warners neared the city, traveling at a rate of speed, according to the trial record, of either 30 to 40 or as much as 65 to 75 m. p. h. and without braking at all, they slammed into a coal car near the end of a long train, operated by the New York Central Railroad Company, then crossing the highway. Margaret Warner was killed instantly, her body being ejected from the truck, while Maurice was trapped inside as his truck was dragged some 50 to 60 feet along the railroad before it separated from the coal car. He too died soon after being extricated from the wreckage.<sup>9</sup>

What seemed to be an obvious example of reckless driving by a young man, who as a lifelong resident of the city was quite familiar with the area and knew of the dangers of such railroad crossings, which had the usual warning signs displayed as well as white lines painted on the highway surface near a 20 m.p.h. speed limit sign, but there were no flashing lights or other signals indicating the presence of a train—state law at that time did not require such warnings, turned out to be a protracted contest between two able legal adversaries that eventually was settled by the Indiana Supreme Court in December 1938 in favor of the railroad company. Carl and his team of lawyers (local counsel in Gibson County, where the case was first tried) had finally prevailed.

The damages suit was initially filed in the Pike Circuit Court, but Attorney Gray requested a change of venue because of “undue influence” upon potential jurors by the local populace, and because of a “strong prejudice” within the community against the railroad company, and the Gibson Circuit Court in Princeton was selected. The plaintiff, seeking \$10,000 in damages over the loss of his only child and his son-in-law, was Russell W. Dyer, a Petersburg

businessman who was the “administrator de bonis non” of the decedents’ estates. His main attorney was T. Morton McDonald of the McDonald and McDonald law firm in Princeton.

Among the numerous people who testified at the jury trial were train crewmen, several others who had attended the party at Rock Cliff, including some of the band members as well as, of course, the two crash witnesses in the passed car, and an expert witness, a professor of chemistry and physics at Evansville College, who was quizzed about car and truck lights and how the dull black finish of the train’s coal cars reflected (or failed to reflect) the lights of automotive vehicles, and with whom Carl quibbled over whether his views were opinions or guesses, since he had not specifically tested automobile or truck lights under the conditions prevailing on the night in question.

At the conclusion of all testimony in this long trial in 1935-36 and before making their final arguments, the attorneys submitted to the judge for presentation to the jury their proposed formal instructions for the jury. McDonald turned in a long list of 22 instructions, some of which filled three or four typed pages, and

most of which, redundantly it seems to me, charged negligence on the part of the railroad regarding its maintenance of the crossing and the operation of its trains. Gray, not to be outdone, submitted a list of 77 instructions that set out the “law of the land” and put the “proximate cause” for the accident solely upon the recklessness of driver Warner. Judge Dale Eby considered them all but refused to pass along to the jury 5 of McDonald’s instructions, 35 of Gray’s, while “on his own motion” adding 7 from the court. So the jury, in addition to weeks of testimony, had 69 instructions to consider during their deliberations. They did so expeditiously, and returned in early June 1936, having reached what Carl Gray called “the only verdict, under the evidence, it was possible to have returned.” It was, in Foreman Reba C. Rabb’s simple words, “We the jury find for the defendant.”

The judge accepted the jury’s decision, issued his decision soon afterwards, saying that the plaintiff will “take nothing by his complaint” and is responsible for the court costs. He then denied the plaintiff’s request for a new trial, a customary procedure, but granted his request for appealing the decision to a higher court.<sup>10</sup>

The appeal went forward in 1937 and eventually reached the oral argument phase on April 7, 1937. In getting to this point, both sides had prepared lengthy briefs. The appellant's (McDonald's) brief was 322 typewritten pages long, whereas Gray's printed brief was only 113 pages long, including literally hundreds of case citations in support of his contentions (64 on one point regarding driver negligence that required two full pages to list). After due consideration, on May 10, 1938, the Appellate Court affirmed the lower court's decision, but this led to a new appeal by the determined and distraught father of a decedent, and new briefs by both sides, that went to the Indiana Supreme Court. On December 19, 1938, this court "denied with opinion" a rehearing of Mr. Dyer's case, the opinion being written by Judge Fassler.

An enormous case file had been created regarding this matter, the transcript of the trial proceedings in Princeton amounting to a file of 366 numbered legal-sized pages, plus of course the four briefs and various other miscellaneous petitions and affidavits. Interestingly, too, shortly before the Dyer case actually went to trial

in late 1935, Carl Gray had become involved in another complicated lawsuit that extended into the 1940s.

In this second case, Carl represented the school system and the administrators in Marion Township in Pike County, where the village of Velpen is located. Two cases emerged there, based upon a contract dispute and the abrupt dismissal, in the middle of a school year, of two teachers in January 1935. Separate suits were filed on behalf of each teacher in Pike County, but because of suspected undue “influence” by the teachers “over the citizens of Pike County,” the cases were transferred to nearby Washington in Daviess County. Carl represented the schools, Velpen High School where Alma McIlwee taught, the elementary school where Charles Smith taught, as well as the new township trustee, Claude Miller, who had dismissed the teachers on the second day of his term as trustee and the first day of school in January. It was Miller’s contention, perhaps at the suggestion of his attorney, that the contracts the two teachers had signed with former trustee John Survant were invalid because they had not been approved by the State Board of Education. When the cases were tried in 1936, Judge Frank

Gilkinson found for the teachers and awarded each the unpaid amount on their year-long contract plus incidentals and interest, or \$448.

These cases were immediately appealed, first to the Indiana Court of Appeals, and finally to the Indiana Supreme Court because a constitutional question had been raised by the attorneys. For these and other reasons, these school cases are interesting. Not only do they give some insight into the educational system of the state at that time, such as teachers' salaries, their conditions of employment, and the various reporting requirements imposed on them (including an enumeration of all students, listed by gender and race), but also because, as revealed in the full briefs filed by both sides (Frank Ely, of Ely and Corn, eventually Ely, Corn and Nixon before the case was settled, represented both teachers), Carl had a lot to learn about conducting proper cross examinations during trials and other things. Special petitions to the courts seeking additional time in which to file their briefs also reveal that both Carl and the avuncular veteran attorney Frank Ely were extremely busy lawyers during the latter 1930s. Ely also had an

illness requiring hospitalization during this time that also delayed matters, and these cases were not finally settled until 1942, fully seven years following the dismissal of the teachers. For example, in January 1938, when Carl asked for an additional 60 days in which to prepare his brief, he filed with the appellate court a notarized statement detailing his legal work at that time: a number of cases, besides this one, “pending in the appellate court of the state of Indiana,” additional cases underway “in Dubois, Knox, and other counties in Indiana,” including of course Pike County, where “several cases ... require his attention and time.”<sup>11</sup>

Unquestionably, Carl was a very busy man, and the extension of time was granted. The resulting printed brief in the Charles Smith case, filed on April 8, 1938, was 59 pages long, whereas the brief for the appellees was only 7 pages long, because, as stated at the outset, the appellant, in his brief, “has accurately set forth the nature of the action,” has “correctly stated what the issues were,” “how they were decided,” and “what the judgement [sic] was.” The appellee maintained, however, contrary to Mr. Gray’s contention, that “there was no error whatsoever in the trial, the findings, or the



judgment, by the court below.” There followed a very concise summary of replies to the alleged errors committed below, and then Ely apologized to the court for “this small brief.” It was so short, he explained, because “there is nothing to rebut.” Ely concluded that the appellant’s argument that the written contract at issue here was invalid because it “had to be approved by the State Board of Education,” but that is not the law. Therefore, we ask that the lower court’s judgment “in all things be affirmed.”<sup>12</sup>

Carl’s much more lengthy “brief” in this case, after setting forth the basic facts, called Smith’s contract invalid because state approval was required for all State Aid Townships (ones that received appropriations from the state in order to keep their schools open), including those in Marion Township, but that approval had not been given. The same set of facts applied to Alma McIlwee’s case, and indeed very similar but slightly longer briefs, were filed regarding it. But the Supreme Court, after due consideration of the law and the facts as presented in an agreed upon “statement of facts” which was to constitute “all the evidence” before the court, agreed with the lower court’s initial decision.<sup>13</sup> It was fortunate for

the teachers that Carl's views had not prevailed, but he had presented his position well and surely earned his small fee from the township.

Another interesting case of the 1930s was one involving the Indiana Alcoholic Beverages Commission (ABC) and Carl's Oldsmobile dealer, who, like Carl, also attended Petersburg's Main Street Presbyterian Church. The case began when Omer Klipsch, an up-and-coming local businessman who in addition to his Oldsmobile dealership also sold International Harvester farm equipment, decided he'd like to expand again and become a beer distributor for Petersburg and Pike County. Accordingly, in 1939 Klipsch submitted an application to the Indiana ABC for a beer wholesaler's permit, which, if issued, would put him in competition with Harcourt Scales in nearby Winslow, whose wholesale beer business had started in 1935, shortly after America's "noble experiment" of Prohibition had ended.

The next step was for the ABC to make an investigation into Klipsch's character and reputation in his community, and the business climate there as well. To expedite matters, ABC

commissioner R. A. Shirley made the investigation personally, interviewing a number of people in both Petersburg and Winslow, including Harcourt Scales and as many of his business clients as he could locate the day of his visit to Pike County. Not surprisingly, representatives from both banks in Petersburg and all others with whom Shirley spoke made highly favorable remarks about Klipsch. Similarly, Scales and all of his customers, beer retailers, with whom Shirley spoke, also had good things to say about Scales and his conduct of business. But when the ABC promptly acted on Klipsch's petition, to the Petersburg man's great surprise and disappointment, it was unanimously rejected "for economic reasons." Rather than go through a resubmission of his application and another hearing, Klipsch, through his Jasper attorney, Leo J. Stemle, decided to file suit against the ABC and force it to issue the desired permit.

How it happened that Carl Gray, an inveterate Oldsmobile owner (the locals believed that his wife would not let Carl have the car of his first preference, a Cadillac, because she thought it was too showy and ostentatious), came to represent the ABC and

Harcourt Scales in this case and not Omer Klipsch is unclear. It might have been simply that Scales had approached Carl first, and as was his practice he accepted the case, so Klipsch resorted to an attorney from a neighboring county. Alternatively, it could be that Carl was annoyed with Klipsch because his friend did his banking at the Citizens State Bank rather than the First National Bank, where Carl was a major stockholder and where he also maintained his law office (on the second floor).

These and other interesting facts about life in in small Indiana towns and villages in southwestern Indiana are stored in the court records about this case. This is true, in part, because Mr. Shirley's report about Pike County to his fellow ABC commissioners became part of the court record. From it, for example, we learn that there were only fourteen beer retailers in the environs of Petersburg and Winslow in 1938 and 1939, that all the beer distributed by the wholesaler located in Winslow, Harcourt Scales, sold for ten cents a bottle (no one preferred draft beer), that Scales's "good stock on hand" included six Indiana brands and five "outside" brands, including two premium-priced beers, Budweiser and Pabst, and

that all regular beer cost the retailers \$1.65 a case, the other two were priced at \$2.60 a case, and that Scales's profits in 1938 amounted to \$3,500. Moreover, since the area he served "was not a particularly wealthy section of the state, with only four incorporated towns and a few villages," Shirley saw "few chances for larger sales."<sup>14</sup>

Based upon this report, despite Klipsch's good character and strong financial standing, the Commission, as stated above, rejected his request for a wholesaler's permit. Then, as the law establishing the ABC stipulated, appeals from its decisions were to be heard in the Superior Court of Marion County. There, Mr. Stemle argued that the ABC had acted "capriciously and arbitrarily" in denying the petition and asked the court to "mandate its approval." For his part, Carl began by challenging the law that authorized an Indianapolis court to hear appeals from the ABC, calling such authorization a violation of the Indiana Constitution because it amounted to "special legislation," and in this manner he was arguing for the ABC's decision to stand. The court, however, ignored this argument and voted to uphold the Commission's

decision. This, in turn, led the disappointed but determined would-be beer distributor to file an appeal to the Indiana Supreme Court, which accepted the case because a constitutional question had been raised by both attorneys.

In their briefs to the Supreme Court, both attorneys believed that ABC disputes should not be taken to the Marion County Superior Court, but they disagreed in suggesting (“demanding” in legal parlance) how the court should rule. Obviously, Klipsch’s attorney wanted the ABC’s decision reversed, whereas Carl’s more lengthy brief, as usual, explored the constitutional issue thoroughly, challenging the original legislation and its two subsequent amendments that created the ABC, but of course it ended up by seeking, in fairness, approval of the ABC’s decision. But all these fundamental questions were put aside. Instead, the court implicitly upheld the law regarding the ABC and then ordered a new trial in the Superior Court. Apparently Klipsch decided this would be futile and he dropped his plans to become Petersburg beer distributor.

Finally, in regards to the decade in which Carl Gray became a full-time attorney and began moving to the forefront of his profession, it is useful to note that in addition to handling all types of cases at home and in all of the adjacent counties as well as in the capital city, Carl also “made some law,” as the phrase goes within the legal fraternity, in what became one of his most celebrated case of the decade if not of his entire career. This is the famous “motion picture” case, in which Carl became the first Indiana attorney to successfully introduce motion pictures in a trial. The film he used depicted the plaintiff in a suit for damages who claimed he had been severely injured in a car wreck. Carl, representing the insurance company after its offer of a \$10,000 settlement was rejected, managed to get motion pictures of the alleged cripple, who was the owner and manager of an automobile race track near Haubstadt, Indiana, in Gibson County, at work shortly after the accident presented to the jury. The film showed the man jumping over fences and in and out of race cars as he was getting them lined up for their various heats (races), and helped persuade the jury that the injuries suffered were less severe than claimed. The insurance

company's liability was reduced to the amount of his verifiable medical expenses, \$745, resulting from the accident.<sup>15</sup>

Although I have not discovered the names of the parties in this case or its precise date, several references to it in interviews and in various retrospective articles about Carl, the basic outline of this story is known. Carl also wrote a long article for a professional journal in 1940 about "Motion Pictures in Evidence," but unfortunately for the historical record, he does not provide any details about his case in this regard. Instead he reviews at length the first attempts, in 1923 and after, at using evidence of this type in other states, noting the general reluctance of all courts to accept it. Just as still pictures and x-ray images were suspect at first, so too were motion pictures, usually used as attempts to recreate with actors and duplicate equipment a depiction of the issue at bar. Carl closed his article with recommendations, based upon the "actual experience in the trial of a case" by the writer, about how to lay the foundation for the introduction of this new form of evidence, offering a total of six steps in order to do this. He also had four suggestions regarding the projection of the motion pictures, so that,



*inter alia*, “the exhibition . . . will not exaggerate or minimize the actions of the objects photographed, and . . . will correctly show [to the jury] the object as photographed, in reference to the actions and speed of the object.”<sup>16</sup>

## Notes to Chapter 5

### Returning to the Law, Full Time

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<sup>1</sup> Untitled, undated clipping, about March 1930, in the Carl M. Gray Papers, Petersburg, Indiana.

<sup>2</sup> *Petersburg Press*, April 19, 1938.

<sup>3</sup> See [www.in.gov/isp/2632.htm](http://www.in.gov/isp/2632.htm)

<sup>4</sup> Author interview with Carl M. Gray, September 9, 1988.

<sup>5</sup> *Petersburg Press*, May 15, 1936.

<sup>6</sup> Author interview with Carl M. Gray, September 9, 1988.

<sup>7</sup> Ibid. The story passed on to me by the chief justice was one of Carl's bawdy tales, as they frequently were. It involved a case in which some young boys were charged with having had sex with a farmer's cow. While, in response to a question, the offense was being described, one juror in particular, an old farmer, leaned forward in his chair and listened intently. Then, in answer to the question, "What happened next?" the witness grinned and said, "Why, the old cow just crapped all over him." The juror slapped his hand on his knee and blurted out, "Yep, that's right! They do it *every* time!" Author interview with Chief Justice Richard M. Givan, July 12, 1989.

<sup>8</sup> Quoted *ibid*. The facts in the *State v. McClellan* case are summarized at 202 *Indiana Reports* 673 (1927).

<sup>9</sup> *Pike County Democrat*, November 4, 1932.

<sup>10</sup> See the Appellant Court of Indiana's case file for *Russell W. Dyer . . . , Appellant vs. the New York Central Railroad Company, Appellee*, Case No. 15,987, Indiana State Archives, Indianapolis.

<sup>11</sup> "*Appellants' Petition . . .*," January 26, 1938, Case No. 16,165, Appellate Court Records, Indiana State Archives, Indianapolis.

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<sup>12</sup>Appellee's Brief, 7, *ibid.*

<sup>13</sup>The two briefs were slightly longer because of the objections to some of Carl's questions in his cross examination of Mrs. McIlwee, which were sustained and which became the basis for some of the alleged errors by the lower court. These questions, and the rulings upon them, some of which must have been embarrassing for Carl, because Ely's objections pointed out that the questions were not proper for cross examinations, but Carl included the entire exchanges in his brief. Also, the brief included the agreed statement of facts in full, which was 46 numbered paragraphs long. Case File No. 16,125, *ibid.*

<sup>14</sup> Indiana Supreme Court Case File No. 27,231, *Omer Klipsch Appellant vs. Indiana Alcoholic Beverages Commission, Harcourt Scales, Appellees*, Indiana State Archives, Indianapolis. Shirley's report, dated March 7, 1939, is found on pages 95-105 of this record, as part of the appellant's brief.

<sup>15</sup> This story is best told by Simon Stemle in a newspaper column for the *Jasper Herald*, March 11, 1982. I learned further details about it during an interview with a Gibson County politician, Robert Fair, who supplied the name and location of the race track, but not the track owner's name. More evidence of the significance of this case and its appearance in casebooks on evidence soon thereafter comes from Indiana University President John W. Ryan, who referred to it in his citation while conferring upon Carl an honorary doctor of law degree in 1981. President's File, Indiana University Archives, Bloomington.

<sup>16</sup> Carl M. Gray ["of the Petersburg Bar"], "Motion Pictures in Evidence," *Indiana Law Journal*, 15 (June 1940), 408-435. The quotations are at pages 434-35. Incidentally, Carl's only other academic or scholarly article was an earlier and shorter piece for the same journal on "Compulsory Automobile Insurance," which he basically opposed as a threat to settling liability the traditional way, before a judge and jury in the courtroom. *Indiana Law Journal*, 9 (Dec. 1933), 157-64. Carl even considered writing a book on jury instructions, a procedure in jury trials that he had mastered, and he signed a contract in 1948 to do so, but the book never appeared.

## Chapter 6

### Cases and More Cases: The 1940s

“They are all important, they’re all important.”

Carl M. Gray, 1988

In the early 1940s, despite escalation of the war in Europe, which had begun in September 1939 and into which the United States entered in 1941, business for Carl Gray became heavier than usual. Three cases that created the largest accumulation of documents associated with Carl’s cases in the Indiana State Archives (which houses the records for Indiana’s Appellate Court and the Supreme Court) all stem from the war years, 1941-1945. Given the hectic pace of his practice, it is entirely understandable why, after twenty-five years of working alone, Carl decided in 1946 to take on an associate, a war veteran, Edward J. Waddle. Then, in 1948, with Waddle as his partner, the

firm of Gray and Waddle was established, and its business continued to be heavy.

It is the plan here to examine, first, these largest-file cases whose records are stored in the Archives, even though Carl would not agree with my assumption that these cases were among his most important ones. In response to my question about his most important cases over the years, he replied, redundantly, “They are all important, they’re all important.”<sup>1</sup> And that was his approach to each one of his clients, who all felt that their business with their attorney was his top priority.

The first of these massive case file cases to be considered is an interesting will contest, one in which Carl not only appeared as an attorney but also as a witness, because he was the one who had drafted Robert J. Simpson’s original will on January 12, 1939, according to Mr. Simpson’s clearly expressed, but unusual, wishes. This will, however, was challenged by Mr. Simpson’s son, mainly on the grounds that the testator was “of unsound mind” at the time, late in life, that he made his will. The son, Edgar L. Simpson, was obviously disappointed that he had been bequeathed only \$1.00

from his father's sizable estate, whereas his sister, Lucy (Simpson) Collins, because of an unspecified "disability," was given "all the remainder of [the] estate of every kind, character, and description," which estate was "to be held in trust for her use and benefit" by a bank in Spurgeon, Indiana. The bank, however, declined the appointment, and one of its officers, Abe L. Loeser, was named in its place as trustee.

When Robert J. Simpson died on October 17, 1939, soon after having drawn up his will, the disinherited son promptly filed suit in the Pike Circuit Court to overturn it. Elderly attorney Frank Ely of Petersburg represented the son. The case was venued to the Warrick Circuit Court in Boonville for a jury trial. The ensuing proceedings in Boonville in 1941 were quite lengthy, in that there was testimony from no fewer than 42 witnesses, 16 called by the plaintiff, 26 by the defendant, represented by Carl Gray. The jury found for the plaintiff, i.e., the son, but Carl and his client immediately appealed the case to the Indiana Supreme Court.

Because there was as yet no policy of “discovery” regarding prior notice to the opposing sides about witnesses to be called, there was something of a “Perry Mason” aspect to this trial, regarding a new-found witness by Carl about midway through. There was also great intensity on the part of counsel on both sides, as the thousand-page trial transcript, lengthy briefs, and several last-minute motions to the high court indicate.

Testator Simpson was a farmer in the southern reaches of Pike County whose 75-acre farm was located near Spurgeon. Simpson and his wife, who died in 1930, were the parents of two children, a son and a daughter, both of whom lived (and farmed) on land received from their parents. As a widower, Simpson became very lonely and, rather than remain alone in his farmhouse, he developed the habit of visiting (and living with) a number of relatives for extended periods of time. In this manner he stayed several weeks each with both of his children, as well as with nieces and nephews as far away as Boonville and Evansville. Eventually, though, he had a falling out with both of his children, after which time he lived with other relatives.

Simpson, however, was not destitute. His farmland sat atop large coal deposits and he sold some of his acreage and mineral rights to the Enos Coal Company, headquartered in Cleveland, Ohio, but with local offices and officers in Pike County. One such officer was banker Albert Jordan, a land agent for the coal company and the man who had purchased Simpson's land for the coal company. Jordan was also the first (and, at that time, only) president of the First National Bank in Spurgeon, where Robert J. Simpson banked.

When the farmer decided, after often mentioning his plans to do so but without giving any details about its provisions, to have his will drawn up, he first asked Mr. Jordan to write it for him. The banker declined, saying this was a lawyer's job, but he agreed upon his next business trip to Petersburg, to take Simpson up there to see attorney Carl M. Gray. This happened on January 10, 1939, when early that day Jordan and Simpson called on Gray in his office. Carl of course immediately agreed to help, and after quickly getting the basic information he needed from his farmer friend, a man he had known for more than twenty years, he called his



secretary, Mrs. Alma Klipsch, into his private office and began dictating the will. About two hours following his arrival, Simpson left the law office with a typed first draft of his will, having promised to return it promptly after studying it and making any desired changes. Accordingly, since Jordan had to return to Petersburg on January 12, Simpson went along with him and was able to return just two days later with the will and ideas for a few minor changes.

One of the unusual features of the original will was Simpson's plan, as noted above, to essentially disinherit his son, leaving the bulk of the estate to his daughter both because of her special needs and because he wanted his property eventually to go to Lucy's two sons, of whom the elder Simpson was very fond. The major change Simpson wanted to make in the will's first draft was the insertion of an explanation about his son's "disinheritance." Accordingly, the revised will contained these lines, immediately after the token award of \$1.00 to his son:

During my lifetime I advanced to Edgar L. Simpson . . . approximately forty (40) acres of real estate, and lumber to build a house upon the real estate. At the same time I gave to my daughter, Lucy Jane Collins, forty (40) acres of real estate. By reason of the [good] financial situation of my son . . . and due to the disability of my daughter to provide the comforts of life, in the distribution of my property, I make the distinction and distribute

it as provided in this will to assure the necessary maintenance and sustenance for my daughter.<sup>2</sup>

Part of this statement was technically incorrect because the land that the son, Edgar, had received and lived on for a long time had come from his mother, and this became one of the grounds upon which Edgar and his attorneys tried to overturn the will.

On January 12, 1939, the amended will was completed, retyped, signed, and witnessed. The two witnesses happened to be attorney Carl M. Gray and banker-land agent Albert Jordan, a matter of much discussion in the trial because of another clause in the will regarding the trustee's full power over the estate and its valuable coal lands. Originally, the trustee named was Mr. Jordan's bank, but later this was changed to an individual, Abe L. Loeser, also a banker but from Winslow, where he was the president of the First National Bank there.

On the surface, in January 1939, the will's creation seemed a routine matter worthy of little discussion, but things changed quickly following Simpson's sudden and unexpected death later the same year, on October 17. Soon thereafter, when the will was retrieved from Simpson's lockbox at the Spurgeon National Bank by

attorney Gray, in the presence of the Pike County assessor and Simpson's two children, and its contents became known, the disinherited son immediately contacted another attorney in Petersburg, Frank Ely (of Ely, Corn and Nixon), and a suit was filed in the Pike Circuit Court there seeking to overturn the will, mainly because the testator was of unsound mind during the last year of his life, but also because he had been unduly coerced and influenced by others in the making of his will.<sup>3</sup>

The long jury trial that resulted was held in Boonville during the summer of 1941, with Carl driving to the distant city, even though Warrick County is adjacent to Pike, daily during its conduct. There is no need to review all the testimony in this trial, known officially at first as *Edgar Simpson versus Lucy Jane Collins*, because much of it was repetitious as its forty-two witnesses were called upon to describe Robert Simpson's actions and attitudes over the years. The lead attorneys, both from Petersburg, were assisted by other attorneys from Petersburg, Princeton, and Boonville; on Carl's side, the local counsel was Leslie Hendrickson.

The jury must have been perplexed throughout the trial, in that all of the plaintiff's witnesses, who were either members of the extended Simpson family or close personal friends of the decedent, testified that the elder Simpson appeared to them in his last years to be of "unsound mind," that he often seemed confused in his conversations and repeated himself or abruptly changed subjects. The friends and relatives also testified that Simpson sometimes stumbled while walking, and that he was known to have fallen out of bed a time or two. Conversely, none of the witnesses for the defense, who were primarily business associates of the decedent, had noticed any such problems in walking and talking, and testified to their belief overall that Robert J. Simpson was of sound mind.

One thing that most witnesses agreed upon was that Mr. Simpson did not often discuss his private business dealings, talk about selling his land to the Enos Coal Company, or provide any details about the will that he proudly announced in January 1939 had been completed. Some family members recalled, however, that "Uncle Robert" had stated in general terms that he intended to divide his property equally between his two children.

One exception to this line of testimony came when Carl brought with him a witness from Petersburg, also a distant relative of Mr. Simpson, whom he had somehow learned about midway through the trial. This person, Mrs. Audie Owens, with whom Robert had stayed for a few days early in 1939, when he came to Petersburg to watch the Pike County basketball tourney. At that time there were five basketball-playing high schools in the county and the strong rivalry among them featured the intense play of all these teams during this annual showcase of talent.<sup>4</sup> Concerning Simpson's brief stay with the Owenses, Mrs. Owens testified that one day she and "Uncle Robert" were discussing wills in general and in response to his niece's remark that wills could be broken and she hoped his was "done right" and that his wishes would be followed, Simpson uncharacteristically revealed some details about his new will, completed about two weeks before the basketball tournament began. He told Audie Owens that Lucy and her children were to be the primary beneficiaries, that Edgar was to get almost nothing, and that "Carl Gray will never allow this will to be broken."<sup>5</sup>

In several places the raw emotions stirred by this case emerged. This was particularly true during Carl's own testimony, when he was interrogated by the Princeton attorney, Hovey C. Kirk, who had him read into the record the exact wording of the will he had drafted, which included the section appointing the Spurgeon National Bank as the estate's trustee. Such appointments were not permitted by state law at that time, and Kirk chided Gray for not knowing that. "How long have you been an attorney?" "Twenty years." "Twenty years! And you don't know that!" Carl passed off the implied insult by observing, "Well, Mr. Kirk, you're more familiar with banking law than I am." Later, the two men tangled again, and when Carl attempted to expand on an answer, Kirk snapped, "Just answer my question. We don't want any speeches from you." "Well," Carl snapped back, "I don't want any speeches from you, either."<sup>6</sup> This exchange did not bring any rebuke from the judge and the interrogation continued.

Earlier, there had been a spirited cross-examination of Carl's surprise witness, Mrs. Owens. When the information came out that Mrs. Owens had spoken to Carl about her testimony, Mr. Ely asked,

“Well, what did he tell you?” She replied, “He said to tell the truth.” Their discussion also brought to light Mr. Ely’s comment away from court that he intended to break the will. When Mrs. Owens replied that she prayed that would not happen, Ely retorted, “Your prayers will not be answered this time.”

And at first it seemed that the attorney was correct. When the jury finally reached a verdict in June 1941, it did find for the plaintiff. This led to an immediate announcement that the decision would be appealed to the Indiana Supreme Court. Of course several things had to happen before this could happen—a trial transcript, which turned out to be over 1,100 pages long, had to be prepared, briefs had to be prepared and printed, and a time for oral arguments before the court (as requested by Carl) had to be found, but it all happened rather quickly.

The lower court trial ended in June 1941; an appeal was filed in July, and briefs from both sides (delayed because of attorney Frank Ely’s extremely busy schedule) were finally ready in November. Then the Supreme Court set oral arguments, limited to one hour by each side, for February 6, 1942, by which time its

members would have studied the briefs. And Carl's brief was anything but that. The printed booklet he had submitted, which included liberal portions of the trial transcript, listed no fewer than 62 reasons in support of his motion for a new trial, particularly the lower court's "invalid" instructions which, he believed, had "invaded" the jury's prerogatives regarding its decision, was 497 pages long. Mr. Ely's 61-page brief, which does show signs of haste in preparation, was also vigorously argued. After ridiculing the "extreme length" of the appellants' brief and its repetitious verbiage, which included much "dead wood," Ely simply implored the jurists repeatedly to "study the will!"--particularly those parts of it that gave complete control over the estate and the fate of a daughter to a non-family member, which he asserted proved that Robert Simpson was either of "unsound mind," or "unduly influenced" by outsiders, when he made his will. Ely concluded that "the verdict is right; the judgment is right; no error intervenes; justice has been done, and robbery 'by law' should be rebuked by the Supreme Court."<sup>7</sup>

Carl's long brief ended much more prosaically---he simply stated, after listing and then arguing each of his 62 reasons for a



new trial, that “for the errors hereinabove pointed out, and each of them, the appellants pray that this cause be in all things reversed.” Surprisingly to some, especially to the appellees, the Supreme Court agreed with the appellants’ assessment, and on March 10, 1942, reversed the Warrick Circuit Court judgment, so Carl could claim a significant and hard-fought victory in this case.<sup>8</sup>

The second major case that Carl became involved in during the early 1940s, one that overlapped slightly with the Simpson will case, was a notorious and scandalous prosecution in Knox County. The accused perpetrator was the county’s Superior Court judge, Herman M. Robbins, who was indicted in December 1941 on various morals charges. Specifically Judge Robbins, whose responsibilities included operation of the county’s juvenile court, faced two counts of “contributing to the delinquency of minors” and, more sensationally, four counts of sodomy.

Carl was not involved in this case when the initial charges were filed, but later, during the first of two trials for the judge, Carl was called in “to assist” the team of Knox County attorneys who had the unpleasant task of defending Judge Robbins (a former

colleague) when the first trial began in March 1942. The trial was held in the Knox Circuit Court, located in the same large courthouse as the Superior Court, with of course a special judge. Judge Ralph A. Seal, the sitting circuit court judge, recused himself, and the Indiana Supreme Court nominated three possible replacements for him, each side in the case having the right to “strike” one. This process left Judge William F. Dudine of Jasper as the remaining nominee, and he agreed to accept the position of temporary, or special, judge for the Robbins case.<sup>9</sup> The fact that Carl Gray, also from outside the county, was called upon to help out in this highly publicized and significant case proceeding is a powerful statement regarding the fast-growing stature of Gray as a courtroom performer and a master of strategy and tactics as well as the theatrics often associated with dramatic legal confrontations.

This case, as noted, began long before Carl Gray joined the defense team and in truth took the leadership of it. Indeed, according to the sordid details brought out during both contentious trials and duly reported, of course, in the local and state press, the judge’s alleged improprieties with several juveniles, both girls and

boys, began as early as 1939 in his private office and included “naked parties” at a remote beach on the Illinois side of the Wabash River, but none of these allegations became public knowledge until formal charges were filed late in 1941. There were, however, rumors about the judge and his misconduct with juveniles circulating among members of the Knox County bar. Accordingly, in November 1941, a small group of distinguished Vincennes attorneys was asked to investigate these stories. The local prosecuting attorney, also looking into this situation, agreed to assist the attorneys, who later, on November 25, 1941, had a private meeting with the judge and sought his resignation. Judge Robbins protested his innocence, but did agree to resign if necessary to protect the image and reputation of the court and in order to avoid a public trial.

Of course, no resignation occurred and trials ensued that were marked by weeks of contentious legal wrangling over the grand jury investigation leading to the indictments, possible attorney disqualification, jury selection, and more. Finally, in March 1942, the trial began after Judge Dudine ruled for the state regarding the

defense's attempt to have the charges "abated." But then the defense gained a significant advantage, when, during the prosecution's opening statement, Carl spoke up and "suggested" that the defense desired to have the defendant tried on one charge at a time, and asked the state to specify which charge it wanted to try first. The judge upheld this tactic, and Prosecutor Arthur L. Hart immediately replied, specifying one of the sodomy charges involving a young male that had occurred on May 11, 1940. Soon thereafter, as required by a new state law, the defense announced that it would offer an "alibi defense" and denied "that the defendant was present at the time and place mentioned in the indictment."<sup>10</sup>

Two weeks later the trial on this one charge got underway, with jury selection beginning on April 6. But, as the Vincennes newspaper noted, "Legal Battles" slowed the proceedings considerably, as the jury had to be dismissed while the attorneys argued their positions. Then, when the prosecution called its first witness, the 14-year old boy, he refused to testify on the grounds that he would "incriminate himself." This brought forth more arguments, after the jury was dismissed for the fourth time that

day, and a motion from the defense that the charge be dropped. While the judge reserved his decision regarding the future of the trial, Carl Gray nevertheless went ahead with his opening statement, which reviewed the judge's life, including service to his country in wartime and afterwards as an attorney and judge, and concluded by suggesting that the judge was the victim of a "political frameup," masterminded by the Vincennes police department.

As revealed in Attorney Gray's statement, Judge Robbins had been born in Freelandville, Indiana, in 1893 and came with his parents to Vincennes in 1918. He attended Vincennes University and then the Indiana University School of Law, after which he began a law practice in Vincennes and was elected to the bench of the Superior Court in 1938, where, Carl stated, he "had been an outstanding judge, and his work in juvenile cases had won him high praise from state authorities." Concerning his alibi on which the defense expects to win acquittal, Carl pointed out that on May 11, 1940, the judge had occupied the bench that morning, then went home at noon, where he met his sister from Washington, Indiana. Their mother had died on May 2, and the two of them

went to Freelandville to place flowers on the grave of their mother in observance of Mother's Day on May 12. The newspaper then reported that "The attorney wept as he recited the incident of the visit to the grave," and closed his tearful statement with reference to "trumped up charges" against the defendant from the police and the prosecution, and by calling upon the young witness "to stand by his story."<sup>11</sup>

The very next day, on April 9, after failing to persuade the boy to testify by assuring him that to do so would not incriminate him (the lad probably having been told this by Carl or others on the defense team who admitted to the judge they had "spoken" to the boy) and a stern warning about possible contempt of court charges, the judge decided to accept the state's motion to dismiss the one charge against Judge Robbins. Immediately the state announced it would move on to another charge, this one involving misconduct with two young girls. But before a new case could get underway, in another surprise development, Judge Dudine, declaring that he was prejudiced and would be unable to be impartial in his rulings, withdrew from further deliberations regarding Judge Robbins.

This meant that the nominating procedure had to be repeated, which eventually resulted in Judge Edwin C. Henning of Evansville becoming the new judge. He accepted the position and immediately authorized the selection of a new jury. This proved to be more difficult than the first time, but in late May 1942, a new trial began. Judge Henning's first ruling was to deny the state's motion to exclude the three attorneys on the defense team who had participated in the investigation before the first indictments, to whom the prosecutor had revealed its entire case against Judge Robbins. Then Prosecutor Hart made his opening statement, charging that the defendant had sexually abused a young girl on June 28, 1939. He was followed by defense attorney Gray, who repeated, before a new jury as well as a new judge, his review of the defendant's biography, including his military service and his exemplary record as superior court judge, where "his handling of juvenile cases that came before him in his court won for him not only the admiration of the local bar, but praise from the state probation department."

After a pause during which, in the jury's absence, the attorneys argued about the admissibility of certain evidence, Gray, referred to in the press as an "eloquent Petersburg attorney," resumed his opening remarks and charged that a police officer, Captain Jeff Thomas, had questioned the alleged victim alone in a private room at police headquarters, and then presented her with a statement which if she did not sign, "he would send her to the state school for girls." Then he further stated that when the girl's father learned of the statement, he asked his daughter if they were true. "She said, 'No, daddy; what I said in that statement I was forced to tell.' " Then Carl went into the so-called double alibi defense, stating that it would have been impossible for either Judge Robbins or the second girl, who supposedly had witnessed the attack (and undergone one herself) in the judge's chambers, to have been there on June 28, 1939. That day Judge Robbins was in court all morning, disposing of eight cases, after which he had accompanied his sister to Evansville who did some shopping, while the judge was with an attorney friend there until 3 p.m. Upon returning to Vincennes Judge Robbins was the dinner guest of Dr. M. L. Curtner, after which the men listened on radio to the heavyweight



championship fight between Joe Louis and “Two-Ton” Tony Galento. In the second girl’s case, that was the day she attended the funeral of a young child for whom she had frequently baby-sat and otherwise had stayed home.<sup>12</sup>

The trial then got under way, the first witness being a 14-year old girl who was only 12 at the time she was describing. During Deputy Prosecutor Gilbert Shake’s questioning, she said that she was acquainted with Judge Robbins, and that she had met him in late May 1939 at the boat club. This brought out one of Attorney Gray’s many objections, who said this meeting had no relation to the date of June 28, 1939, specified in the indictment, and he secured Judge Henning’s ruling that no events other than those occurring on June 28, 1939, were to be admitted as evidence in the trial. Under further questioning, the girl testified that on the day in question she had visited, with a companion of the same age, Judge Robbins’s private office, and that he had locked the door, closed the window blinds, and had the girls disrobe and stand before him while he fondled them. She also denied having told her father that Captain Thomas had forced her to sign a false statement.

When Carl questioned the girl, he asked her a series of rapid-fire questions, 165 of them, seemingly at random, about herself, her family, her schooling, and other general questions. It seemed unplanned, but his probing questions brought out, sometimes indirectly, the facts that her parents were divorced, that Judge Robbins, then in private practice had handled the divorce, and that she was familiar with the courthouse and many of its employees. Surprisingly, though, when the state presented its second witness expecting to get corroboration of the first girl's account, the companion said she had made many trips to Judge Robbins's office in company of her friend, but she denied having done so on June 28, 1939.

The following day, a Saturday, the state was unable to get any testimony from its two called witnesses, because they could not testify to any events on the date stated in the indictment. Therefore, the state rested, and the defense, rather than offering witnesses of its own, abruptly moved that the court issue a directed verdict of acquittal. Judge Henning agreed to take their request

under advisement and said he would make his ruling Monday morning.

When the ruling came, it was prefaced by an extensive restatement of the charges against Judge Robbins and a belabored explanation of Judge Henning's reasons for accepting the defense's (Carl Gray's) motion and directing the jury to return a verdict of "Not guilty." The long explanation, beginning with the point that "every law enforcement officer should be zealous in stamping out sex crimes" and then moving to the charges against Herman Robbins, included a restatement of the "entire evidence submitted by the State of Indiana to prove the alleged crimes," which was based on the testimony of the first witness, a girl of 12 at the time. She said that the defendant "was sitting down; we was standing in front of him. He felt around our private parts . . . [and] used his mouth too." She also testified that the defendant "did the very same with her [the other young girl] as he did me; felt around over her too" and stated that the two were with the defendant that time "between a half hour and an hour." Judge Henning then added that the state was attempting to prove there was "carnal copulation per

os . . . meaning [by] mouth” with both girls, but the “girl companion testified that she was not there at all,” which led him to conclude that the state had failed “to prove all the facts and elements necessary and essential to constitute the offenses charged in the indictment.” Therefore the court instructed the jury to return a verdict of “not guilty.”<sup>13</sup>

This of course was done, and the prosecutor, described in the newspaper as “dejected” by this turn of events, soon decided against further trials on the remaining charges against the judge. He said the state had introduced all the permissible evidence given several adverse rulings by the trial judge. Moreover, he doubted that he could get a guilty verdict in any additional trials because the witnesses were the boy who had refused to testify earlier, and the girl companion who contradicted her friend during her testimony on the witness stand. Consequently, noting that he had up to sixty days in which to file an appeal, Hart announced that he would soon file an appeal to the Indiana Supreme Court, based upon three questionable rulings by Judge Henning: failing to prohibit the three attorneys who had conducted a pre-trial

investigation from in the trial; excluding from the record any “reference to dates and crimes” other than June 28, 1939, the date named in the indictment; and the court’s support of “defense counsel’s motion for a directed verdict of not guilty.”<sup>14</sup>

The appeal came along promptly, and was filed the following month. The briefs, each only 9 pages long, were submitted in August and September, and oral arguments, as requested by the appellee (Carl Gray, representing Herman Robbins) were made, after one postponement because of Carl’s busy schedule on the date first proposed, on December 14, 1942. During the period between the trial and the Supreme Court’s final decision in February 1943, Herman Robbins had returned to the Superior Court bench until his term expired, but he was not a candidate for reelection. Instead, when his term ended at the end of the year, he moved on to a new position as deputy prosecutor, having been appointed by the new Knox County prosecutor.

He must have been enormously relieved, just as former prosecutor Hart must have been bitterly disappointed, when the Indiana Supreme Court announced its decision in *State v. Robbins*

on February 17, 1942, upholding the basic “not guilty” verdict, but also, in a sternly worded criticism of both the trial judge and the defendant’s defense lawyers, agreed with the state’s prosecutors that Judge Henning had erred in withholding evidence from the jury and in making its directed verdict. The court’s lengthy opinion included the truism that “the jury must decide upon the credibility of witnesses.” If a judge “may direct a verdict in accordance with his opinion as to the weight of the evidence, the result would be a denial of a constitutional right of jury trial.” The opinion also contained strong criticism of the defense counsel’s (mainly Carl Gray’s) “abuse” of the prosecutor for doing what, it seemed to the court, it was his responsibility to do.

Overall, of course, the Robbins case was another highly publicized victory for Carl Gray, but curiously in our general discussion about his legal career, Carl stated the one case he regretted having taken on was this one. He did not say why he felt that way, but several things come to mind. It may have been simply because of the subject matter, or because he had to intimidate several young witnesses into saying the right thing, or

perhaps because his conduct in that trial brought to him something close to a reprimand from the Indiana Supreme Court regarding his conduct in that unsavory proceeding. It could be that he, like my research assistant who, after reading and photocopying more than four dozen newspaper articles about the Robbins case, “came away from it all with a strong sense that the good judge was actually guilty as charged,” but Carl had faith in the law and its practitioners and did not want it or them sullied in any way. So he did all that he could to get the verdict needed. His performance, indeed, led my researcher to a second conclusion, that “the prosecution was simply no match for the defense.”<sup>15</sup>

The third massive-file case that Carl litigated in the 1940s (from 1943 to 1948) was really a series of cases stemming from the same event. That event was a fatal car-truck collision on Highway 57, approximately fifteen miles north of Evansville, on the evening of September 25, 1943. At that time Carl A. Block of Mackey, Indiana, was driving his Ford automobile south towards Evansville. Seated on the front seat beside him were his wife, Ida, and her mother, 77-year-old Matilda Oestricher of nearby Fort Branch.

Near the point where Base Line Road meets Highway 57, the Block car and three northbound semi-trailer trucks owned by the Hayes Freight Lines company approached each other. Rather than passing normally and harmlessly, for some reason (the facts about this of course are unclear and became the basis for two seemingly interminable lawsuits, appeals, and retrials) Block's car sideswiped (or was sideswiped by) the lead truck in the Hayes trucks convoy. This caused the car to spin and then it, as reported in the *Evansville Courier*, "plunged head-on" into the second truck, driven by Carl A. Douglas. Driver Block died on the scene, shortly after being extricated from his car, and his two passengers were "severely injured." Truck driver Douglas also sustained some slight injuries.<sup>16</sup>

Eventually both Mrs. Block and Mrs. Oestricher filed lawsuits against the trucking company and its two drivers whose trucks had stuck their automobile. Carl Gray was retained to represent the defendants in both cases. As revealed in the ensuing trials, Mrs. Block had suffered a severe blow to the head, which rendered her unconscious and in a coma for about a week, but she eventually



made a full recovery and in fact soon remarried. The elderly Mrs. Oestricher, evidently a strong and robust woman at the time, suffered (apart from her son-in-law) the most serious and long-lasting injuries, which included several broken ribs, a broken clavicle and leg, and her left thumb was severed. Moreover, during her recovery and while walking with a cane, she fell and broke her other leg.<sup>17</sup>

The ladies' lawsuits for damages, handled by Princeton, Indiana, attorneys in the McDonald and McDonald law firm, sought at minimum \$10,000 each from the defendants, because the trucks had been operated in a "careless and negligent" manner, had failed to dim their headlights for oncoming traffic, and were following each other too closely, contravening the state law that stipulated a distance of at least 150 feet (approximately five truck lengths) between such vehicles on the open road. Carl Gray, of course, disputed all of these allegations and brought forth his own interpretation of the cause of the wreck—Carl Block's own erratic driving, which included speeding and often driving partially left of center. In fact, when the major collision between Block's car and

the second truck occurred, Carl's witnesses testified that the truck was nearly completely (all except the left rear wheels) off the roadway to the right, that all the trucks' headlights had been dimmed, and that a proper, legal distance was maintained between the trucks during their slow drive northward. Remember, the national speed limit during the war years had been set at 35 miles per hour.

Impressively too, Carl was able to produce, among the witnesses for the defense in addition to the three truck drivers, the three passengers in another car that was traveling, for several miles, just ahead of the trucks, thus establishing through their testimony the safe speed of the trucks and the fact that their headlights had been dimmed. (These witnesses were also the first ones on the scene after the accident and had helped remove all three occupants from the badly wrecked car.) These people, a young married couple and two friends who were dating, were en route for a leisurely weekend in Winslow with other friends, all testified that the driver of their car (not available for testimony at the trial because he was then serving in the U.S. Navy) had to swerve

sharply to the right to avoid being hit by the Block car shortly before it did indeed hit two of the following trucks. All remembered their driver saying something to the effect of “Wow, that guy nearly hit us.” Carl also called to the stand the state trooper (Sgt. Carl Thomas) who had investigated the accident, the doctor (Dr. Henry Weiss) from Deaconess Hospital who had treated the injured ladies, and even a hitchhiker who had been passed by the truck convoy as he stood alongside the highway not far from where the crash later occurred. All in all, it made for interesting and lively trials in the Warrick Circuit Court in Boonville before the same judge who had heard the Simpson will case not long before (and against whom, in all these cases, Carl had filed “judicial misconduct” charges as part of his appeals).

The appeals were taken because, in both of the accident victim trials, the juries had found for the plaintiffs. The first verdict, arrived at on April 3, 1945, awarded \$2,300 to Mrs. Oestricher. Surprisingly, perhaps, in view of the lesser injuries suffered, another jury, six months later (on October 20, 1945), awarded Mrs. Ida Block Wilson, \$3,000.

The appeals process was slow, and was delayed several times because the attorneys on both sides were swamped with business in other courts and could not always file their briefs on time, and also because it was difficult to find mutually acceptable times for oral arguments ( as requested by Carl) before both the Appellate and Supreme Courts of Indiana. In one of his necessarily formal and notarized petitions for additional time, Carl stated that when the September terms of the Pike Circuit Court and other circuit courts in his area began, he swore that he would be “engaged substantially continuously in the trial of cases through September and October [1945].” The higher court readily agreed to the delay, but rather ungenerously reset the new deadline for November 1.

Nonetheless, the appeals gradually moved forward, as trial transcripts well in excess of a thousand legal-size pages accompanied by lengthy briefs, often consisting of hundreds of printed pages, were reviewed by the courts. Initially, in both cases, the Warrick County trial court’s decisions were reversed and new trials were ordered.<sup>18</sup>

The new Mrs. Wilson's second trial was venued to Mount Vernon, in Posey County, where Carl successfully represented the Hayes company and its drivers in the spring of 1947. The new trial of her mother-in-law, which began more than a year later, the fall of 1948, had been venued to Jasper, in Dubois County, making it a much shorter drive for the Petersburg attorney again to represent the original defendants. There is no evidence in the case files at the state archives regarding the outcome here. Presumably Carl prevailed again for his clients or they decided to pay the damages assessed, for the case was not again appealed (which provides a public record about it). And so the Hayes Freight Lines cases ended in the late 1940s. Certainly Carl had not complained about their long duration, for they kept adding to his billable hours but, as noted before, it was at this time that Carl finally took on a partner to assist him in what he called "the practice."

In 1944 Carl also handled the final settlement of a messy and rather complicated will case that had originated in Knox County in the 1930s. He became involved when the case, involving farm property along the Wabash River through which a flood-control

levee had been constructed, was venued to Pike County.

Interestingly, as Carl explored the background developments regarding Joseph J. Morrison's will and the administration of his estate following his death in 1927, he learned that Herman Robbins, once the judge of Knox County's Superior Court and one of Carl's clients, had been the attorney for the widowed Mrs. Morrison, now Mrs. Hetzell, as she attempted, rather ineptly, to administer the estate. Now the deputy prosecutor in Knox County, Robbins was one of the witnesses questioned by Carl. His testimony went smoothly, but when Carl interrogated the distraught Mrs. Hetzell, it was a different story. Carl had been retained to represent mainly an aggrieved party in the tainted sale of a portion of the Morrison farm (actually he technically represented nineteen "appellees," including several Morrison family members, various public officials and taxing units in Knox county, and the State of Indiana), and the confrontation was sometimes bitter. Mrs. Hetzell, a feisty character known for her salty language and unsettled personal life (her second husband, as Carl seemingly innocently brought out, was in the state penitentiary at the time of this trial), had attempted to renege on an early sale of some of her tax-

burdened property. When Carl, who had quickly mastered the details of this woman's complicated business transactions, continued with his probing questions, he was accused by the opposing counsel of "badgering" the witness. Nevertheless, at the trial's end, the sale was upheld in the Pike Circuit Court. When, of course, given her combative nature, Mrs. Hetzell appealed the decision, Carl and his two Knox County colleagues prevailed on behalf of their nineteen appellees and convinced the Appellate Court of Indiana to dismiss the appeal. Its ruling to this effect came out on April 4, 1945.<sup>19</sup>

Finally, in considering Carl's "important" cases in the 1940s, that is, the ones that were appealed to higher state courts, thus creating full records about them, there is one more involving a double indemnity claim against an insurance company that goes into the "you can't win them all" category. This case also originated in Knox County and was venued to Pike. The case involved the death, following a fall in her home, of an already ill woman, Edith Van Way, on January 18, 1942. The lady had a \$1,000 life insurance policy with the Prudential Life Insurance Company, and

the policy contained a clause providing another \$1,000 of coverage in case of accidental death, with “accidental death” being precisely defined. Upon her death, the company promptly paid \$1,000 to her beneficiaries, her two children, but refused their request for the second \$1,000 following the “accidental” fall. When the case was venued to Petersburg, Carl joined an old friend, attorney Joseph W. Kimmel, in representing the plaintiffs in suing the insurance company. At the conclusion of a jury trial, the court accepted Carl’s motion (who had taken the leading role in the trial) and instructed the jury to find for the plaintiff. This was done on November 29, 1943, but the defendant company, represented by William D. Curll of Petersburg and Norman F. Arterburn, a distinguished Vincennes attorney (who later served on the Indiana Supreme Court), immediately appealed the decision and, on September 26, 1944, the Appellate Court of Indiana upheld the decision for the plaintiffs. Another appeal followed, and eventually the Indiana Supreme Court, following oral arguments in January 1945, disagreed with Carl and his expert witness in the trial, Dr. L. R. Miller of Winslow, about the role of Mrs. Van Way’s disease and the fall in contributing to her death. In its ruling issued soon



afterwards, the Supreme Court, in a divided decision, reversed the trial court's and the Appellate Court's verdict that the death had been primarily caused by an accident.<sup>20</sup>

In addition to maintaining an extremely heavy and usually successful work load during the 1940s, Carl also was remarkably active in other areas of his life. He had begun the decade by purchasing property on the southeastern edge of Petersburg that he soon developed in to a showplace estate known as Gray Acres. And in his professional relations, he continued moving up in the leadership of the Indiana State Bar Association, indeed serving as president of the group in 1943-1944. In business affairs, he became a member of the board of directors of the First National Bank in Petersburg, which was also his long-time landlord until, in 1945 or 1946, he moved his offices into a ground floor location on Main Street, just opposite the main entrance to the Pike County Courthouse. It should also be noted that Carl remained extremely active and prominent in the leadership of the Main Street Presbyterian Church, serving on its session multiple years while often teaching one of the Sunday School classes, either the Men's

Class or one designed for Young Married Couples. Mrs. Gray was also a leader in the church, particularly in its music program.

Finally, in considering his “extracurricular” activities, mention must be made of his pride in and support for Indiana University, not only for its athletic teams of which he had once been a part but also for its general growth and improvement. This interest led him to establish, and serve as the first president of, the I.U. Alumni Club of Pike County in 1948. He followed this up by becoming a charter member of the Hoosier Hundred Club, an I.U. booster group whose members committed themselves to donating at least \$1,000 a year to the university. Over the years, Carl’s activities in all of these aspects of his life flourished.

## Notes to Chapter 6

### Cases and More Cases: The 1940s

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<sup>1</sup> Author interview with Carl M. Gray, March 22, 1988.

<sup>2</sup> *Brief of Appellants, Abe L. Loeser, Trustee Under the Provisions of the Last Will and Testament of Robert J. Simpson, Deceased, [and] Abe L. Loeser Administrator de bonis non With the Will Annexed of the Estate of Robert J. Simpson, Deceased, Appellants vs. Edgar L. Simpson, Lucy Jane Collins, Leo Collins, James Lloyd Collins, Floyd Collins, Appellees*, 12-13, Indiana Supreme Court Records, Indiana State Archives, Indianapolis.

<sup>3</sup> *Brief of Appellee Edgar L. Simpson, Loeser v. Simpson*, passim, *ibid.*

<sup>4</sup> The five schools were Petersburg, Spurgeon (Simpson's favorite), Stendal, Winslow, and Otwell. In 1939, the tournament winner was the Stendal Purple Aces, a team that upset the highly favored Spurgeon Cardinals that year. *Otwell Star*, February 3, 1939. Now, of course, with only one high school in the county, Pike Central (located midway between Winslow and Petersburg), there is no county tournament.

<sup>5</sup> "Trial transcript, *Loeser v. Edgar L. Simpson*," 793-826, Indiana State Archives.

<sup>6</sup> *Ibid.*, 1108-1109.

<sup>7</sup> *Brief of Appellee Edgar L. Simpson*, 61, *ibid.*

<sup>8</sup> 219 *Indiana Reports* (1942), 572 ffg.

<sup>9</sup> Indiana's trial court system consists of both superior and circuit courts in some counties, as well as a few special jurisdiction courts such as city and town courts and tax courts. Admittedly a complicated system, some counties have as many as four types of trial courts, some have only the more powerful circuit courts. For more information, see David J. Bodenhamer and Randall T.

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Shepard, eds., *The History of Indiana Law* (Athens, Ohio: Ohio University Press, 2006), especially 257-277.

<sup>10</sup> *Vincennes Sun Commercial*, March 25, 1942.

<sup>11</sup> See “State Asks Dismissal of Robbins Case When Boy Refuses to talk,” *ibid.*, April 9, 1942.

<sup>12</sup> “Witnesses Tell Story in Morals Trial of Judge Robbins,” *ibid.*, May 29, 1942.

<sup>13</sup> *Appellant’s Brief, State of Indiana, Appellant, v. Herman Robbins, Appellee, in the Supreme Court of Indiana* (1942), 16-21. The judge’s statement was included in full in this brief because it was one of the three errors the state believed the court had committed during the trial.

<sup>14</sup> *Vincennes Sun Commercial*, June 1, 1942.

<sup>15</sup> *Ibid.*, February 18, 1943; *State v. Robbins*, 46 *North Eastern Reporter, 2nd Series* (1943), 691-702; Jeff Duvall to author, May 29, 1991.

<sup>16</sup> *Evansville Courier*, September 26, 1943.

<sup>17</sup> Trial transcripts, “Ida Block Wilson v. Hayes Freight Lines,” and “Matilda Oestricher v. Hayes Freight Lines,” Appellate Court of Indiana files, Indiana State Archives, *passim*. See also the appellants’ briefs in these cases, both quite lengthy and both prepared by Attorney Gray.

<sup>18</sup> The Supreme Court’s final ruling in these Hayes Freight Lines cases can be found at 226 *Indiana Reports* (1948), 1-34.

<sup>19</sup> See “*Hetzell v. Morrison, et al.*,” Appellate Court of Indiana, 60 *North Eastern Reporter, 2nd Series* (1945), 150-152. Chief Judge Draper wrote the court’s opinion.

<sup>20</sup> See 59 *North Eastern Reporter, 2nd Series* (1944), 721-728. It might be noted that this decision, issued March 12, 1945, was delayed because of Carl’s busy schedule at the time. He twice had to petition for additional time to prepare the appellee’s brief, a task his co-counsel had left to him.

## Chapter 7

### Gray and Waddle: The 1950s and 1960s

“The *Vincennes Sun-Commercial* had an article about the [Foreman] case and said that the defendant’s counsel had done too good of a job.”

Carl M. Gray, 1988

As the country was adapting to its new status in the post-war world and becoming increasingly involved in Cold War competition primarily with the Soviet Union, so too was this period a time of transition for Carl Gray and his still new partner, Edward J. Waddle. Although the law firm continued to flourish as clients from all walks of life surfaced, at this point in his life Carl seemed to relax a bit and find new ways to enjoy his success and his prominent place in his community’s affairs.

For one thing, he stepped up his and his wife’s entertaining as they repeatedly opened their Gray Acres home to parties, fests, and celebrations of all sorts. Carl, still a country boy and an outdoorsman who loved to hunt and fish, at these gatherings frequently both supplied the table’s main course with recent “trophies” collected during his outings and also prepared them

himself, donning a necessarily large apron and chef's hat as he fried catfish or expertly grilled game or fowl repasts. Sometimes these gatherings (or separate ones) also featured musical entertainment supplied by Mrs. Gray, Eulala, who despite a growing hearing problem loved to perform on the harp Carl had presented to her.<sup>1</sup>

At this time, too, Carl indulged his love of hunting by buying some property for that purpose out in South Dakota. As often as possible (and probably far less often than he preferred), he traveled to his "ranch" out west in hunting season, usually with some of his brothers (John Gray, a clothing company executive in New York and then Chicago, in particular was an enthusiastic hunter) or other friends and business associates. At this special place for hunting, there was of course some memorable partying in the evenings. Carl's proclivities regarding these extra-curricular activities on his hunting expeditions bring to mind a comment from Kin Hubbard, whose comic cartoon character, Abe Martin, also made occasional forays into the woods on hunts. As Martin once reported, "We killed one squirrel and two quarts."

Carl was also especially active in affairs at his church, the Street Presbyterian Church in Petersburg. He was a long-time member of the church's governing board, the session, and, as mentioned above, a teacher in the Sunday School. In 1950 as a welcoming gesture to his new Sunday school class, Carl treated all its members to a fish fry at Gray Acres—135 attended.<sup>2</sup> He also became very close friends to ministers of the church, particularly

the Reverend Frank W. McLaughen, who like Carl was a rather hefty man and they spent many evenings in long discussions, usually following a sumptuous meal at Gray Acres or at a local restaurant. Carl also chaired the ministerial search committee when McLaughen moved to a church in Illinois, which led to another close relationships with his immediate successors, including a personal favorite of the author, the young Reverend J. Bruce Melton, a recent graduate of the Louisville Presbyterian Seminary, then filling his first pastorate. Later the Reverend S. Thomas Niccolls served at the Main Street Presbyterian Church, and he expressed to me his satisfaction at having a man of Carl's caliber among the congregants of his church.<sup>3</sup> Mrs. Gray, likewise, was an active and valued member of this church and various women's groups in it. She was particularly interested in the music program and there is now a Carl and Eulalie Gray Music Fund at the church that enhances its ministry in this special way. Earlier, before this fund was established in 1979, the Grays had a major role in providing a new organ and chimes to the church in 1954. Carl was the speaker when the organ was dedicated to the memory of longtime organist Maud Dillin, and the chimes were dedicated to the memory of Carl's parents, Mr. and Mrs. John and Emma (Rudolph) Gray.<sup>4</sup>

In his professional life, Carl remained active in the leadership of the Indiana State Bar Association, seemingly never refusing an invitation to serve on one of its committees. Over the years, he probably served seriatim on almost all of them. Indeed, he was the

founder of the Trial Lawyers Section, a special interest group within the association that reflected Carl's major concerns and talents as an attorney. He used these talents and abilities at home, too, and served a number of terms as the Pike County attorney, which got him even more involved in most of the major issues (and controversies) facing the community in the 1950s when he was a vocal and articulate advocate of the causes in which he believed. When Carl declined to continue as county attorney in 1958, it is interesting to note that his successor was his partner, Ed Waddle.

Waddle, a Kentuckian by birth and a Marine who had served abroad in the Pacific during World War II, was (as Carl was to become) a graduate of the Indiana University School of Law, had come to Petersburg in 1946 when he joined Carl in the practice of law. Waddle, a tall, slender man blessed with a deep, rolling baritone voice, was also a member of the Main Street Presbyterian Church and he was a much-admired soloist in the church choir. One wonders if Carl had any influence regarding these aspects of Waddle's life, but however it happened, Waddle and Gray were two major assets in their church and community over the years. Waddle was frequently the master of ceremonies at community events such as the annual Pike County Fair's beauty contests, and both he and Carl were founders (and longtime sponsors) of the Petersburg Little League baseball program.

In the 1950s and earlier too, most people in and around Petersburg considered the two top attorneys there to be Carl Gray



and Hugh Dillin. The younger man, Hugh, had a career in many ways that mirrored Carl's—both were graduates of Petersburg High School and Indiana University, both served in the U.S. Army, and both served in the Indiana General Assembly. Hugh's years of private practice in Petersburg extended from 1938 to 1942, the year he joined the military, and then again from 1946 to 1961, during which time he also was a member of the Indiana House of Representatives (in the 1930s then again in 1951, four times), and then, like Carl had done, he joined the Indiana State Senate. At this point their careers diverged, because Hugh was appointed, by President John F. Kennedy, as a federal court judge where he served with great distinction from 1961 until his death in 2006.<sup>5</sup> Certainly his talents in the legal field had been on display in Pike County and were clearly seen in his many courtroom confrontations with Carl Gray.

Both men of course did all the routine jobs of lawyers but when a major event of some sort required expert legal services, these men were usually the first ones to be retained. Accordingly, their paths frequently crossed in the courtrooms of Pike County and environs, and their rivalries there were legendary. But few of these cases went on to higher courts on appeal so there are very few full records of trials pitting Carl against Hugh in Indiana's Appellate and Supreme Court archives. The files of one case, however, stemming from an Industrial Board of Indiana hearing that featured these two men, are stored in Indianapolis.

This face-off stemmed from a tragic situation in Knox County where an employee of Reed Orchards was killed in a car-train collision. On September 29, 1950, Marshall A. Brown was returning to work after lunch and was driving across the tracks of the Baltimore and Ohio railroad that passed through the Reed Orchard property, when the car was struck by a passenger train killing Mr. Brown instantly. Subsequently, the orchard company, considering the man still to be “on his own” and not yet at work, declined to pay either the funeral service expenses of their employee or any damages to his three dependents, a wife and two daughters, as required by Indiana Workmen’s Compensation law of 1915 when a worker “in the course of his employment” dies in an accident. After a long wait, Mrs. Brown finally approached Hugh Dillin, then in practice in Petersburg with his father at Dillin & Dillin, and asked for his help in getting the compensation she believed she was entitled to.

This resulted in Dillin filing a claim for compensation with the Industrial Board of Indiana, the agency charged with administering the workmen’s compensation law. Although this claim was filed on September 26, 1952, about two years after the accident, it was another two and a half years before the first hearing, convened by a single member of the five-man Industrial Board, was held in Vincennes. By that time Ada and Meredith Reed had engaged Carl Gray to assist them in upholding their inaction, and together he and Hugh had prepared a “Stipulation of Agreed Facts” filed in July 1955 and to which amendments were added in 1957. At the initial

hearing before board member Richard M. Hennessy, no action was taken at once because Hugh Dillin needed an additional thirty days to prepare his brief, after which Carl had ten days, later extended by thirty days, to file his reply brief. Consequently, on July 16, 1957, after having studied the amended stipulation, which contained by agreement all of the evidence to be considered (that is, there was to be no testimony by any witnesses), and the two briefs, Hennessy announced his decision. He awarded full compensation to the Brown family, according to the Workmen's Compensation law, of 55 percent of the decedent's average weekly pay (\$40.50), or \$22.28, for 350 weeks to be shared equally by the three dependents (until the daughters reached eighteen), beginning on September 29, 1950, the day of the fatality. He also ordered a payment of \$300 for funeral expenses, thereby reimbursing Mrs. Brown for that expenditure, and set the attorney's (Dillin's) fee at no less than \$15.00, plus a percentage of the money recovered (15% of the first \$1,000, 10% of the second \$1,000 and 5% of all the rest).<sup>6</sup> By my calculations, Dillin eventually received about \$650 on this case.

According to the "Stipulation of Agreed Facts," Brown was employed at the Reed Orchards as a "supervisor" of the apple pickers and worked a 9-hour day, from 7 a.m. to 12 noon, and from 1 to 5 p.m., with an hour off for lunch, which could be taken either on or off the premises. On the day of his death, Brown ate his lunch at his home in Vincennes, and started back to work, about a mile east of the city along U.S. Highway 50, at approximately 12:45 p.m. The railroad paralleled the highway at that point, and in order

to enter that part of the orchard where he worked (the Reeds owned land on both sides of the tracks, but the apple checking station was located on the property's north side), Brown had to cross the railroad. In doing so this time, his car was struck by a train and he died instantly. Brown was using the private road built by the Reeds that ran through the north portion of the orchard, connecting the highway with the "Old Wheatland Road," that ran along the northern boundary of the orchard. It should be noted that the amendments made to the stipulation, obviously Carl's work, contained a full description of all these roads, thus emphasizing the point that Brown had an option about how to reach his place of work, and was not required to cross the railroad at an "unprotected" location. This amendment also contained a detailed map of the area, clearly showing both roads, the modern highway and the "Old Wheatfield Road," as well as the Reeds' private road between them.<sup>7</sup>

Given Commissioner Hennessy's decision detailed above, which went against Carl's client, he and the Reeds decided at once to appeal the decision to the full membership of the Industrial Board. This was done expeditiously and very soon thereafter, all five board members, after reviewing all the evidence, simply the stipulation as amended and both briefs, handed down basically the same decision. This action was also appealed, this time to the Appellate Court of Indiana, in the fall of 1957.

Carl prepared a new brief and submitted it in November. Hugh's reply brief arrived at the court on January 7, 1958, shortly after Carl had requested oral arguments before the court. This was granted, and the Appellate Court hearing occurred on May 27, 1958.

The issue before the court was whether or not the decedent was injured "in the course of his employment," and if so, whether his dependents were entitled to compensation. Carl insisted that Brown was fatally injured while still "on his own" time, and believed he had previous court decisions to support his position, especially the *Moore v. Sefton Manufacturing Co.* case. This was a closely analogous situation, in that in 1921 an employee injured himself when he tripped and fell on a public sidewalk, while on his way to get lunch, and compensation was denied.

Hugh answered that the analogy was flawed, that "the special hazard of injury by reason of the railroad intersection with [a] private driveway" was not a risk applying to the general public, as in the case Carl cited, but was "a risk peculiar to the employees of the Appellants, lawfully using such driveway on Appellant's business, including the business of reporting for work." He also cited another Indiana case, "wherein this court directed the Industrial Board to award compensation on a set of facts virtually identical to the facts in our case." In this case, *Jeffries v. Pitman-Moore Co.*, the deceased was, like Brown, a supervisory employee and while riding in his own automobile on the defendant's roadway,

he was accidentally killed at the crossing of the private roadway and an interurban railroad a few minutes “before the time of commencing work.” In determining that compensation was allowable, the court ruled that the critical issue was that the employee had reached the premises of his employer, not the precise time of the accident in terms of when work was to commence.<sup>8</sup>

Hugh also scoffed at Carl “piously” insisting that Brown should have taken “the long way around” and gone back to work over the “narrow, twisting [and longer by half a mile] back route to the orchards instead of over the most direct and modern highway.” He also believed that two cases cited by Carl were of “no help to Appellants” because “the operative facts are simply not the same” or were “dissimilar.” The future judge’s conclusions were that “there is ample evidence to sustain each and every material finding of fact by the Full Industrial Board,” and that “under the law and the facts the said award should be sustained with the statutory 5% increase.”<sup>9</sup> Carl fought back with a seventeen-page reply brief, challenging Hugh’s interpretations of the previous decisions, and emphasized again that in all the referenced cases there was no alternate route open to the victims.

The Appellate Court, in a divided decision, ruled against Carl and upheld the Industrial Board’s award of compensation to the Browns, Hugh’s clients. Still not willing to accept defeat here, Carl’s next ploy was to attempt to have the case transferred to the Indiana Supreme Court. In order to do this, according to the

court's published rules, the appellant had to find a mistaken point of law in the Appellate Court's ruling, and then "state concisely what that mistake was." Carl's attempt to do this, in my view as well as Hugh Dillin's, was not well done, and Hugh happily exploited this lapse by Carl and ridiculed his attempt to be concise and precise and carry the day for his clients.<sup>10</sup> The Supreme Court promptly, although in a split decision, denied the transfer petition. Chief Justice Arch Bobbitt was the lone dissenter, merely stating that he agreed with the minority opinion of Judge Pfaff in the Appellate Court's decision.

In concluding regarding the Reed Orchards case, albeit a stinging defeat for Carl at the hands of a friend and fellow townsmen, one has to be impressed at Carl's diligence and extraordinary labors on behalf of the Reeds. On the other side, the clarity of Hugh Dillin's prose and the forcefulness of his arguments can be recognized and applauded. It is clear to see that he was well prepared for his imminent elevation to the federal bench.

There is one additional case, also stemming from Knox County, to be considered in this period of Carl's life. Overall, perhaps it can be labeled as his personal favorite, in that it generated so much favorable comment for the victors, or, for the losing side, so much surprise and disbelief as to its outcome. This, the Archie Foreman case, is the one that I think Carl most often referred to in retrospective interviews and in discussing with me his life in the courtroom (he even once slipped up a bit and called it his

“favorite case”). Simply stated, Archie Foreman, a Vincennes city policeman, one night in January 1961 went to the police station while off duty. In handling his service weapon at that time, it discharged, killing a fellow officer on duty as desk sergeant. The fatal bullet, moreover, passed through the body of the victim, and then struck a second officer, the radio man, in the abdomen, severely wounding him.

As the police investigation (and Carl’s own inquiries, once he had been retained by Foreman) revealed, the shooting occurred following a long evening of drinking by Archie along with two fellow officers, Archie’s younger brother, Earl, and a visitor from Indianapolis. This small group of men began their “partying” at a bar in Vincennes before moving on to the Show Boat, a tavern/nightclub across the river in Illinois. When the men returned to Vincennes in Archie’s car (a sporty 1958 Thunderbird), the local bar was closed, so the visitor offered swigs to all from his flask of whiskey. As Archie and Earl were returning the last of the men to their cars, Archie happened to lose control of his automobile while rounding a corner and rammed into a parked vehicle belonging to Paul Borden. Seeing no one to report the accident to, Archie drove his still operable car to a repair shop whose owner was awakened and, rather than leave the car on the street, decided to have it parked in his garage. At that time, Archie removed some valuables from the car, including his .38-caliber service revolver, which he stuffed into the front of his trousers.



As he and his brother returned to the accident scene in order to leave a note on the windshield identifying themselves, the two men agreed to say that Earl, not Archie, had been driving the Thunderbird. This was done, as Archie later testified, because at that time the local ministerial association, the “Holy Joes” to the police, were in the midst of a campaign seeking to curtail gambling in the city and suspected police connivance in this illegal activity. Given the fact that “pressure and heat” were on all policemen, and that the chief of police had threatened suspension, even dismissal, for any policemen caught breaking the law, Archie thought it best for his future as a policeman not to admit to a possible “DUI” infraction, and Earl readily agreed to take the blame for the accident.

Their next stop, about 3 a.m., was at the police station in order to report the accident. Actually, it had already been reported by Mr. Borden, who had been notified by a friend of the mishap to his car. He called the police, and they, by following the trail of fluids leaking from Archie’s car, had already located (and identified) it at the repair shop. In fact, the desk officer, Sergeant Orrel Manuel, was involved in filling out an official accident report form (without knowing, of course, who had been driving his friend’s car) when the Foremans arrived at the station. At that time only two men—Sergeant Manuel (known as “Junior”) and Radioman James Mallory—were in the squad room. As Archie approached the desk where Manuel was seated, he removed the revolver from his belt because it was uncomfortable. Seeing this, Mallory yelled at Archie,

and Manuel reached out to grab the weapon, and it fired a single time. The bullet passed through Manuel's neck and then struck Mallory, who cried out, "I'm hit." He then stood up and staggered out of the station onto the sidewalk, where he collapsed.

In the meantime, Archie handed the gun to his brother, saying either "Take this" or "Get rid of this"—the testimony differed, and then tried to slow the blood loss in Manuel's neck, crying out, "My God, Junior, why did you grab the gun?" and "I didn't mean to shoot my best friend." Another officer came to the scene, called for an ambulance, which arrived promptly, and Archie helped the crew place Manuel on a cot. By this time, Earl, still holding Archie's gun, had been jumped by a policeman, whom he fought off and, terrified, jumped into his own car. He drove "three blocks to the river bridge and threw the gun into the water." He then returned to the station, saying he actually backed up those three blocks, where he was arrested, thrown into jail, and then "beaten up."<sup>11</sup>

While Earl was away, Police Chief Lyman Miller had come to the station and was interrogating Archie about events that evening when an officer stuck his head in the door to say that Manuel had died. The chief put down his pen and said, "This is murder." He also refused to listen any more to Archie's explanation, who said, "Well, Chief, if you don't want to hear my side, I think I need a lawyer."

Veteran Vincennes attorney Rabb Emison was Archie's first choice of one to talk to, and together they later decided to ask Carl

Gray to handle Archie's case thereafter.<sup>12</sup> Thus, Carl was on hand, following Archie Foreman's indictment on first degree murder charges, for the preliminary hearing at which time he formally denied all charges and requested a change of venue, saying he believed that "a fair and impartial trial" was not possible because of the "excitement and prejudice against [Foreman] in Knox County."<sup>13</sup>

Accordingly, the case was transferred to the Daviess Circuit Court in Washington, and the week-long ordeal of a trial for Archie Foreman and his family began on Friday, June 9, 1961, when the jury was selected and sworn in. The selection process occurred more quickly than was expected, even though the state, through Knox County Prosecutor Ernest Tilly, Jr., dismissed eight jurors, who said they "could not return a death penalty [verdict]," and a ninth who said he had already formed an opinion on the case.

The defense attorneys, Gray and Waddle, and a local Daviess County attorney, Robert O. Chambers, then questioned the prospective jurors, dismissing a few, including one who had said he would be prejudiced against a man who had been drinking, if the evidence should indicate that drinking had been involved. Surprisingly to Carl, who had requested an extra-large venire of 150 prospective jurors, only the first group of 25 was needed in order to find an acceptable twelve people for the jury (8 men and 4 women). These jurors, through the questions propounded to them that Carl had drawn up some days earlier, had been instructed regarding various key points in Indiana's and the nation's criminal law—that

“the defendant is presumed to be innocent,” that “one charged with crime cannot be convicted until the guilt of the defendant is established by the evidence to the exclusion of any reasonable doubt,” that the “entire burden is upon the State of Indiana to establish the defendant’s guilt by the evidence to the exclusion of any reasonable doubt,” that “the defendant asserts that the shooting in this case was accidental and that since the shooting was accidental that no crime was committed,” that, in order to convict the defendant of murder in the first degree, the state “must establish by the evidence to the exclusion of any reasonable doubt that the shooting was done with premeditated malice,” and that the charge of murder in the second degree requires the state to establish “that the shooting was done purposely and maliciously.” He made these points about the law in the process of asking, “in the event you are selected as a juror,” if the juror understood and accepted each one of these concepts. There were eleven of these questions.

The trial was to have resumed on Monday morning, but Judge Dobbryn agreed to postpone it for a day in order to let defendant Archie Foreman, accompanied by the sheriff, attend the funeral of a younger brother, Woodrow, who had been killed in an automobile accident on Friday evening. (It was a bad week for the Foreman family—one son on trial for his life and another killed in a traffic mishap).

When the trial resumed the following day with opening statements, Prosecutor Tilly promised to present evidence that Archie Foreman had been drinking and was involved in a hit-and-run accident prior to the shooting, which occurred at about 3 a.m. on the morning of January 18, 1961. He added that Foreman had carried his revolver and threatened Sergeant Manuel with it prior to the shooting in the police station, which also injured James Mallory, another police officer. The state had already, in its questioning of prospective jurors, indicated that it would seek the death penalty. Carl Gray, in his opening statement, said that the purpose of these statements was to offer counsel in helping the jurors understand the issues before the court. He then undertook an explanation of Indiana law regarding first degree murder, second degree murder, and manslaughter, and pointed out that there would be “a sharp conflict” in the evidence as the trial progressed. He then stated that the defense would attempt to prove that shooting was accidental and that no crime had been committed.<sup>14</sup>

The first witness called by the prosecution was Ronald Bailey, one of Foreman’s fellow officers who had joined him and the others in their drinking party on the fatal night. He testified that he was with Archie when their car hit a parked car, after which they drove to the McCord Body Shop. Bailey then stated that he went home.

The second witness was another member of the drinking party who added little new information. The third witness was Paul Borden, owner of the parked car that was damaged when hit by

Foreman's car. He also testified that he did not find any note on his car saying who was responsible for its damage, but he admitted upon cross-examination by Carl that his son had found the note.<sup>15</sup>

Additional witnesses the next day included Mrs. Paul Borden, who verified the note-finding, and four more police officers. One, Charles Robbins, claimed to have witnessed the shooting (a disputed point); another, Darwin Booker, was the man who had investigated the "hit-and-run" accident; the third was Captain Loren Willis, who was also involved in the car accident investigation; the final police officer witness was Chief Miller, who had been called at home, despite the lateness of the hour, regarding the Foreman accident. Later he was called again and asked to come to the station, where he saw blood and tracks on the floor and immediately began talking with Foreman about what had happened. He quoted Archie as saying, "Hi, Chief. I shot Manuel. I don't know why I shot my best friend."

The state's final witness was a bitter Officer James Mallory, who told the jury that Foreman had "backhanded" or slapped Manuel across the face twice, knocking off his glasses, before he was shot. He added that Archie had cursed Manuel during their fight before the shot.<sup>16</sup>

Then it was Carl's turn, and the defense's first and main witness was Archie Foreman himself. His initial statement indicated that the shooting was accidental, and he later denied "backhanding" Manuel or that they had at any time argued while

discussing the hit-and-run accident. Carl's thorough questioning also brought out the point that the ministerial association in Vincennes was openly critical of the police regarding their failure to stop gambling in the city, and that the department was under "pressure and heat." Foreman also testified that policemen faced suspensions or dismissals if "they got into trouble or did anything shady."

After describing the "accidental" shooting, Foreman said he held "Junior" (Manuel) in his left arm and tried "to put pressure on the pressure point in his neck" and cried out, "My God, Junior, why did you grab that gun?" and "I didn't intend to shoot you." He also said he remained with Manuel and helped put him on the cot for the ambulance. Prosecutor Tilly's cross-examination focused on why Archie had his revolver with him at that time, who explained that he had just retrieved it from his wrecked car.<sup>17</sup>

Other defense witnesses were Earl Foreman, who corroborated his brother's account of the events leading up to the shooting. More specifically, he denied that Officer Robbins, as he had testified, was in the squad room and had witnessed what transpired there. He then admitted taking the weapon, driving to the river bridge, and throwing the gun into the water. (Incidentally, Vincennes divers, using magnets on loan from Greene County, had retrieved the revolver, which became the prosecution's Exhibit C and which Carl, according to a spectator at the trial, brandished before the court before handing it to the jurors, so that each one

could examine it.) Earl's final answer to his first questioner was that Officer Booker was the one who had struck him, while handcuffed, in the face with his blackjack, breaking two teeth. Then Booker, recalled to the stand by the prosecutor, said that Earl had tried to run away while being taken to the jail, and he admitted hitting him in the face with his hand. Afterwards, Carl brought forth eight "character witnesses" who spoke on Archie Foreman's behalf late on Thursday afternoon.<sup>18</sup>

All the testimony ended in this dramatic trial on Friday morning, and final arguments by both sides with multiple speakers occupied most of the afternoon. As the local press reported, at that time "the courtroom was packed with spectators," including the defendant's wife and the parents and children of Sergeant Manuel, the victim.

Both local counsel Chambers and Gray made remarks for the defense, whereas James Arthur, the Daviess County prosecutor, speaking first, made the state's final summation. He ridiculed the idea that the car accident had anything to do with "the murder," and he called Foreman a man who would "go to any lengths to get done what he wanted done." He charged that Foreman had gone to the police station "purposely to cause trouble," that "pointing the gun at Manuel was premeditation," and that "striking the sergeant and knocking off his glasses was malice."

Summarizing for the defense, Chambers called the whole thing a "farce," saying that "upon the evidence the killing could not have



happened the way the state said it did.” He added that the state wanted a scapegoat, but that “there was no crime in this case, that it was strictly an accident.”

Then Carl took the floor. Fortunately, the Carl Gray files regarding this case (which he opened to me) contain the outline of his closing argument. Handwritten and barely legible, it nevertheless suggests the points of emphasis in his presentation. There is also a lengthy summary of his remarks in the local press, so his message at this time is well documented.

Ever the courteous practitioner, Carl opened by thanking the many participants in the trial, first the judge and jury, then his co-counsel, and even the “opposing counsel.” He also acknowledged the presence of several Foreman family members as well as the Manuel family. Then, after admonishing the jury to return “a fair and impartial verdict,” he turned to the facts of the case. Under his outline heading of simply “Accident,” he told the jury that (like his outline) this case is based on a single word, “accident.” He reminded the jury that the “police uniform does not testify—it is the man beneath the uniform who does.” He also said that in all his years of practice, he “had yet to hear a police officer admit to mistreating a prisoner.” He further noted that “premeditated violence is not ordinarily committed against a close friend, nor is the victim tendered first aid by the aggressor.” Then, according to the outline, he pointed out that every witness agrees that Archie said, “I have shot my best friend. I don’t want him to die.” And

then, he cried out, “**My God, Junior, why did you grab that gun?**” These last words appear in the outline in bold, underlined words.

The outline continues with but a single word, “Conclusion.” And according to later accounts, this conclusion was a very dramatic one. Basically an appeal directed to each juror personally, Carl pleaded, “Don’t place the mark of Cain upon the forehead of this man. Instead set him free, and tell him, ‘Young man, walk through yon door, and go home to your wife and children.’ ”

These summations ended at approximately 4 p.m. and the jury, after being charged by the judge, began its deliberations immediately, breaking once for supper, and then resuming its work in the evening. As expected by the few spectators who had remained, the jury did return to the courtroom that evening and, at about 10:30 p.m., announced its “Not Guilty” verdict.

When this decision reached the visibly nervous defendant, he “burst into tears” as his family “crowded around him.” According to the local press report, “even the defense attorneys were moved to tears by the scene.” Then Foreman, still sobbing, shook hands with each of the jurors and soon moved across the room to shake the hands of the prosecutors, Allen and Tilly. As Carl remembered this scene, however, “a big fat lady juror” left the jury box, walked up to Foreman, hugged him, and repeated Carl’s words in his peroration, “Young man, you’re free! Walk through yon door, and go home to your wife and family.”<sup>19</sup>

There was an interesting aftermath to this trial (although of course no appeal was open to the prosecution), parts of which Carl never tired of retelling. His favorite recollection was the Vincennes newspaper's rather bitter reaction to the unexpected "not guilty" verdict, which said among other things that "Carl Gray had done his job too well." The paper's editor also warned Carl, well known in the city, that he probably should not be seen there in the near future, because he was currently "most unpopular and not welcome." Another report to Carl, in an unsigned memo reporting on a phone call, was that the jury did not believe any of the police testimony. The last item in Carl's "Foreman Case File" is a copy of the letter of recommendation he wrote in support of a job application by Archie to a recruiting officer in the U.S. Army. Carl briefly described the outcome of Foreman's trial, and then said, "It is my judgment that he will make an excellent soldier. . . . I recommend him for military service."<sup>20</sup>

## Notes to Chapter 7

### Gray & Waddle: The 1950s and 1960s

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<sup>1</sup> There is no record available regarding when, or upon what occasion, Carl's gift was made, but Mrs. Gray was delighted with it and immediately began (in private) to take lessons on its use. These lessons were taken in Bloomington, to which place Mrs. Gray slipped away weekly or monthly. A non-driver and to keep her travels unknown to everyone in town, she traveled to Bloomington by bus, usually from Jasper, not Petersburg. A story told me by a friend and professional musician suggests that Mrs. Gray never fully mastered the difficult instrument. After performing at home one evening for her dinner companions, the guests respectfully applauded and one enthused, "Oh, Mrs. Gray, that was wonderful, but what was it that you played?" Her answer, perhaps frustratingly given: "That was 'Silent Night.'"

<sup>2</sup> *Petersburg Press*, August 18, 1950.

<sup>3</sup> Undated letter (ca. 1989), Niccolls to the author, in the author's files.

<sup>4</sup> *Petersburg Press*, March 18, 1954.

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<sup>5</sup> For more information on Judge S. Hugh Dillin, see George W. Geib and Donald B. Kite Sr., *Federal Justice in Indiana: The History of the United States District Court for the Southern District of Indiana* (Indianapolis, 2007).

<sup>6</sup> These details are provided in Gray and Waddle's *Appellants' Brief in the Appellate Court of Indiana: Ada M. Reed, Meredith Reed, Partners, Doing Business as Reed Orchards, Appellants, vs. Harriett M. Brown, Rita Brown, [and] Mary Alice Brown a Minor . . . , Appellees* (1957), pp. 9-10.

<sup>7</sup> The original 16-paragraph stipulation appears at pages 15-20 of Carl's brief, cited above, and the amended stipulation, consisting of a new paragraph 9 along with a plat of the area, appears at pages 20-23.

<sup>8</sup> *Appellees' Answer Brief in the Appellate Court of Indiana: Ada M. Reed, Meredith Reed, Partners, Doing Business as Reed Orchards, Appellants, vs. Harriett M. Brown, Rita Brown, [and] Mary Alice Brown a Minor . . . , Appellees* (1957), pp. 7-8, 15.

<sup>9</sup> *Ibid.*, pp. 22-23, 26, 28.

<sup>10</sup> See Dillin's *Brief for Appellees on Appellants' Petition to Transfer to the Supreme Court of Indiana* (1958), wherein he asserts that, having "carefully searched," the petition to transfer, he was wholly unable to find any statement contained therein, concise or otherwise, as to the alleged new question of law." He also called Carl's seven "alleged reasons" for his petition to be "mere argument" regarding "finding of fact," not "a new question of law."

<sup>11</sup> This account is taken from Earl Foreman's undated, handwritten statement to the police, a copy of which is in the Carl Gray Papers, Petersburg.

<sup>12</sup> Before knowing any details about this case, I interviewed Mr. Rabb, regarding Carl Gray as an attorney, and he volunteered a detailed description of the scene of the shooting, still vivid in his mind nearly thirty years later. Interview, May 28, 1989.

<sup>13</sup> *Vincennes Sun-Commercial*, March 6, 1961.

<sup>14</sup> *Washington Herald*, June 10, 13, 1961.

<sup>15</sup> *Ibid.*, June 13, 1961.

<sup>16</sup> *Ibid.*

<sup>17</sup> "Foreman Testifies in His Own Defense," *ibid.*, June 15, 1961.

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<sup>18</sup> Ibid.; “Murder Trial Goes Into Final Stages,” *ibid.*, June 16, 1961. A cousin of the author who lives in Washington had wanted to see the famous Petersburg attorney in action, so she sat in on parts of the trial and told me about Carl and the revolver. Conversation with Mrs. Sue (Eck) Harper, July 9, 1989. With Sue’s help, I also located and interviewed one of the jurors, Earl Feagus, who confirmed Carl’s apparent fascination with the revolver, and who added that Carl later told Mr. Feagus that he “worked like a dog on the Foreman case,” and only received about a third of his usual fee because the defendant just didn’t have the money.

<sup>19</sup> “Jury Finds Ex-Policeman Not Guilty,” *Washington Herald*, June 17, 1961; Carl M. Gray Papers, Petersburg; Author interview with Carl M. Gray, March 8, 1988.

<sup>20</sup> Carl M. Gray to Sgt. Marion Eveland, June 30, 1961, Carl M. Gray Papers.

## Chapter 8

### Trustee Carl M. Gray

“Carl was a good trustee. Intensely loyal to the university.”

Herman B Wells, 1989

**B**efore Carl could be satisfied with his life and career, in spite of all his successes at the bar all across Indiana and occasionally in some neighboring states too, he had some unfinished business to address. It rankled him that he had not yet received a degree from Indiana University. According to the university records, there were still some 22 credit hours to be added to his résumé, and of course there was the unresolved matter of residency requirements. It was this latter issue that had caused Carl to leave the university without his degree back in 1920.

As early as 1950, however, Carl enrolled in his first “make-up” course, but he did not complete it at that time. Instead, he enrolled in additional courses, carrying 8 credit hours, in the fall of 1952, and again he received an “incomplete” grade in them all. Trying again during the summer session of 1958, Carl signed up for a 5-hour course in research and he also submitted one of his case briefs in order to meet earlier course requirements. This “very excellent brief” (as described by Dean Wallace) regarding the Youngs family (perhaps it involved an estate settlement issue) was used to satisfy the work needed in two courses taken in 1950-51 (for 7 hours). The dean also spelled out the additional hours of credit still needed for the LL.B. degree, and (in a major concession) he went on to say that “your residence will be all right.” The dean assured Carl

that “we can work out ways for you to fulfill requirements on some of the other work in which you still have Incompletes.”<sup>1</sup>

Obviously, these matters were “worked out” during the next two years, basically by Carl taking and passing the final examinations for some courses without having attended the classes, and by submitting other briefs that he (or, as rumored about town, his partner Ed Waddle) had prepared in the course of their practice, for which he received the necessary missing credits. Accordingly, Carl’s name may be found among the list of IU graduates in 1961. He even attended President Wells’s customary reception that spring honoring all the members of the Class of ’61. Wells, though, unaware of Carl’s recent academic activities, was surprised to see him at the reception. “Why, Carl, what are you doing here? There is no need for you to be here.” Of course, Carl readily explained his presence as a graduating senior, enjoyed the reception, and took special delight less than six years later in meeting Wells again, this time as a new university trustee.<sup>2</sup>

In other ways too, the 1960s were busy years for Carl. Besides his heavy involvement with Indiana University, which included setting up annual awards for the most outstanding students at the school’s Moot Courts and proud membership in the Varsity Club and the related smaller, more prestigious Loyalty Group, Carl in 1961 had joined the Board of Trustees of Vincennes University. Both he and his wife were long-time admirers and supporters of this neighboring junior college in Knox County, for which Carl also served on the board of directors of the university’s Foundation. He was also increasingly active in various professional organizations, capped perhaps by serving as the chair of the state bar association’s House of Delegates from 1963-1966. And of course, as mentioned above in the book’s preface, this association, at its annual meeting in October 1996, in French Lick, Indiana, designated one day of the meeting as “Carl Gray Day” and that evening, at its gala banquet, bestowed upon him its “Distinguished



Service Award.” This was the first time in its long history that state bar association had so recognized one of its members by designating a day honoring that person.<sup>3</sup>

The evening banquet was also special. The major speakers at that time were Orison S. Marden, president of the American Bar Association, John S. Hastings, Chief Judge of the 7<sup>th</sup> Circuit Court of Appeals, IU President Elvis J. Stahr, and Governor Roger D. Branigin, and of course Carl Gray too, whose brief remarks concluded the formal program. Particularly memorable was Judge Hastings’s talk on “The Seven Ages of Carl

Gray,” which Paul Rowe, who had arranged the affair, called “the finest lawyer-oriented piece ever spoken, a beautiful combination of choice rhetoric, allusion and metaphor, pungent good humor, and biographically so apropos of the career of Carl Gray.” He added that the governor, a storied raconteur himself, “admitted that you were more than a match for his wit.” Even famed humorist Art Buchwald, on hand in order to speak the following day, “said that you were invading his profession.”<sup>4</sup>

Unfortunately, none of these talks have been preserved, but I do have, courtesy of Jim Farmer, the governor’s press secretary, a copy of Governor Branigin’s handwritten notes for his remarks, basically the starting point or the punch lines for a series of stories or jokes



CARL M. GRAY

SOUVENIR

*Dinner Program*  
Carl M. Gray Day

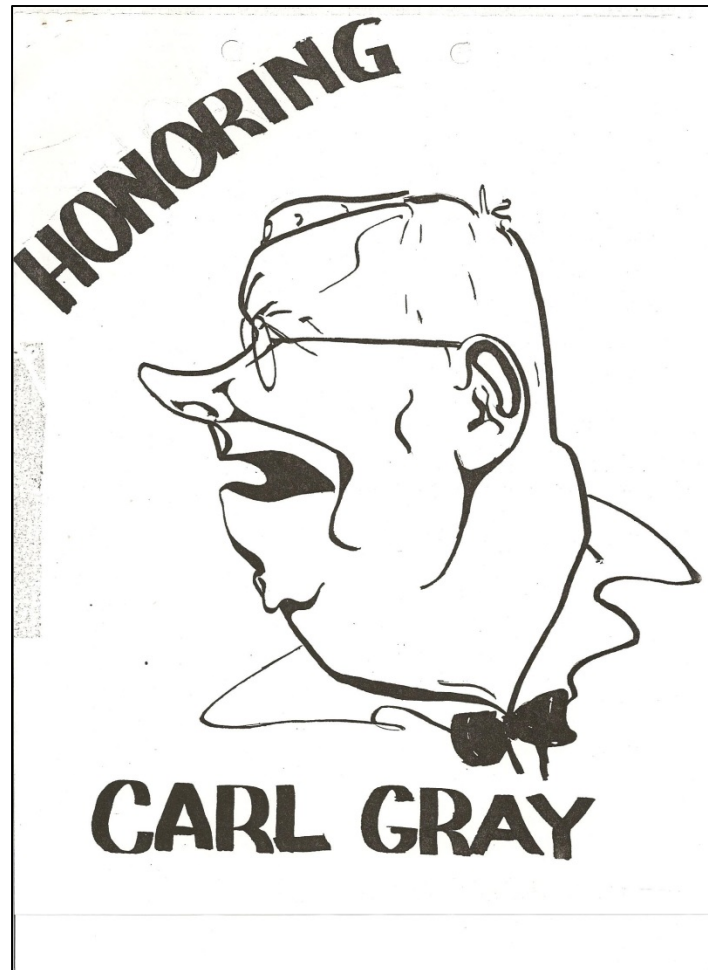
Indiana State Bar Association

Thursday, October 6, 1966

FRENCH LICK-SHERATON HOTEL • FRENCH LICK, INDIANA

**Carl M. Gray Papers, Petersburg**

he told about Carl, including one that Carl often quoted afterwards about being born in Portersville “in sight of a saloon,” and “never being out of sight of one since.” The governor, evidently in commenting on Carl’s ancestry but really on something else, said he was “half Scotch, the other half was Bourbon.”<sup>5</sup>



**Carl M. Gray Papers, Petersburg**

As mentioned, these scholarly and organizational activities did not prevent Carl from maintaining his usually busy schedule as a practicing attorney. One particularly heavy and probably quite lucrative task was to act as the attorney for the Indianapolis Power

and Light Company as it both built a huge power generating plant on the outskirts of Petersburg and then sought the necessary rights-of-way for transmission lines from Petersburg to Indianapolis. This led to considerable litigation, including disputes over land rights that resulted in numerous condemnation proceedings and other litigation. This included combatting the near-simultaneous construction of a publicly financed, somewhat smaller power plant nearby.

These adjacent sites, to the northeast of Petersburg along State Highway 57 leading to Washington and near White River, just below the point where the two large forks of the river converged, were considered to be prime locations for such power plants, perhaps the best in the entire state. There was abundant water available, both from the river and from deep water wells that could be drilled when needed, and there was easy access to good transportation facilities, both by road and rail, which meant that the coal needed to fuel these plants could be shipped in at a reasonable cost from various mines in the coal-rich counties of Pike, Gibson, and Warrick. An Indianapolis Power and Light Company (IPALCO) publication enthused in March 1962 that “the coal supply here is one of the best in Indiana.” In recent years, IPALCO, already a major consumer of coal from southwest Indiana, had purchased annually an average of 1,250,000 tons, and it predicted both units of the plant under construction at Petersburg would use an additional 4 million or more tons a year.<sup>6</sup>

As early as 1951, in anticipation of its future needs for a large, new steam-powered generating plant, IPALCO had acquired its first plot of land in this promising location. A few years later, in 1957, a public power-generating company known as Hoosier Energy also obtained some land close to the IPALCO site for its own use.

Rivalry between the public (an “REMC,” or Rural Electrification Membership Corporation) and the private power plant (an “IOU,”

insider shorthand for “investor-owned utilities”) soon blossomed into open warfare and a flurry of lawsuits, charges and counter-charges by and about each other, along with advertising campaigns, including a 30-minute film by the IOU, resulted.

Carl Gray, a long-time attorney for IPALCO and never one to duck a battle like this, came forward as a vigorous supporter of and advocate for the IOU and an opponent of the REMC, in part because of its proposed use of, he believed, an improperly low-interest loan from the government (tax-payer money) in order to build its plant. Indeed, it now fell to Carl to lead IPALCO’s efforts to obtain all the land and the permits needed in order to build its plant and to construct its transmission lines (across private property, of course), mainly one between Petersburg and Indianapolis.

The REMCs were a New Deal program championed by President Roosevelt and established in 1935. A history of this organization in Indiana, which came to the Hoosier state in 1936, was published in 1985. It carries a chapter on the “long-term battle” carried on in Pike County between IPALCO and Hoosier Energy. This latter company, organized in 1949 and consisting then of nine distribution cooperatives, had applied to the Rural Electrification Administration for a \$42,000,000 loan in order to build a 198,000 kilowatt steam-generating plant at Petersburg, along with 950 miles of transmission lines. Later revised upwards, the loan amount requested in 1959 was \$54,000,000 to build the same-sized plant but with 1,400 miles of transmission lines to serve seven additional Hoosier Energy membership groups.

These plans did not please the folks at IPALCO, including Carl Gray, and their position on this issue is clearly spelled in the company newsletter and, hyperbolically, in a 30-minute film, “The Power Within,” produced in 1964, as well as in a number of lawsuits filed by various IOUs seeking to stop construction of Hoosier Energy’s plant at Petersburg. The initial court rulings in

these suits favored the REMCs, but later court rulings also supported IPALCO's position that its eminent domain rights to build its transmission lines were valid. The major case in this series of lawsuits involved the Graham Brothers Farms at Washington and was appealed to the Indiana Supreme Court. Given the enormous significance of this issue all across the state, more than two dozen *amicus curiae* briefs were filed along with the primary one Carl had prepared, and Carl was the attorney, with dozens of others on the sidelines, who made the final victorious argument for the IOUs to the high court.<sup>7</sup>

In the end, as is easily seen from miles away and by all travelers along the highway past their gates, both Pike County power plants were built in the 1960s and early 1970s. Rather than this outcome being a victory for the power plants, many would say that the real winner in this matter was neither the REMCs nor the IOUs, but rather it was all the people of Pike County through the enormous boost to the local economy represented by those plants. Of course there was also a heavy price imposed through damage to the roads and streets used by the hundreds and hundreds of trucks that constantly crisscrossed the county, as well as the less visible but still real deterioration in the air quality of the region, but the increased employment opportunities, the enhancement to the area's tax base, and the county's increased visibility in state affairs were tangible and welcomed by most, including Carl Gray, who was suspender-popping proud of his adopted home county.

Another indication of Carl's "busy-ness" during his IU trustee years comes from his letter to a young man in Jasper whom Carl was trying to interest in becoming an attorney as well as in attending IU. Carl began his letter to Allen Dick by listing the "jury cases I have assigned for trial" in May and June 1968:

May 14, 1968: Conder v. Stover; #26,691  
 Daviess Circuit Court, damage suit

- May 27, 1968: Traylor v. Traylor; #13,553  
Greene Circuit Court, divorce case  
(This will really be a  
spicy one)
- June 13, 1968: State of Indiana v. Herman Day;  
Assault and Battery with intent  
to kill. Superior Court of Knox  
County, Indiana. This is a feud between  
republican and democratic politicians  
and will be an amusing case to try in  
my judgment. This is especially true  
since both of the parties are compara-  
tively old men. I don't believe the  
defendant in this case could knock the  
hat off a flea, much less kill anybody.
- June 17, 1968: Peek v. Wagler; #4371, Pike Circuit  
Court; automobile damage case.
- June 24, 1968: Indianapolis Power & Light Company vs.  
Ora Drury; #12,742; Greene Circuit Court  
at Bloomfield. This is a condemnation  
or eminent domain case and will be very  
interesting.

Carl then invited the young man to "sit in on the trial of all of these cases if you desire to do so. I think it will give you a keen insight into the trial branch of the practice and will enable you to draw some definite conclusions." Finally, he spelled out the purpose of his letter:

As you know, I am vitally interested in having you enroll at I. U. The University is only 60 miles from Jasper. Your friends and supporters in Jasper will have a better opportunity to see you participate in athletics at Indiana than at any other place. Secondly, I. U. is one of the great schools in the country. If you later determine that you are not interested in law as a career, the Business School or any of the other schools are outstanding. I hope, however, you will be interested in law. Thirdly, if you enroll at I. U. whether you decide to enter the Law School or one of the other schools, I shall be in a position to help you more there than at any of the other schools.<sup>8</sup>

At the time he wrote this letter, Carl was a still new member of the IU Board of Trustees. Happily for Carl, a vacancy on the board had come when attorney David A. Rogers of Indianapolis, at the end of 1966, resigned the seat to which he had been appointed by Governor Branigin in June of that year. The resignation came following Rogers's election to the Marion County Superior Court bench, which he believed would create a possible conflict of interests when cases involving Indiana University reached his court.

Evidently the governor's first choice of someone to complete Judge Rogers's three-year term on the board was another attorney, Carl M. Gray of Petersburg. Branigin, an attorney himself before entering politics full time, was a long-time friend of Carl, and he had great respect for his legal skills and abilities as a negotiator. Moreover, these two attorneys were considered by others to be "drinking buddies" who often, at the end of the day during state bar association meetings, were among the last customers to leave the bar (in the sense of this word as a drinking establishment) each evening.

Carl was delighted to get the governor's call just after Christmas offering the appointment, which he accepted immediately, and later confided that this position was the one he most wanted. He also served briefly as a trustee of both Vincennes University and Oakland City College (now University), but the jewel in that panoply of high office was the IU trusteeship. It must be acknowledged, however, that Carl's appointment was not unanimously hailed within the IU community. President Stahr, in a statement at the time, judiciously both regretted Rogers's resignation and welcomed Gray as "another of the fine legal minds in Indiana who will help guide the policies of Indiana University."<sup>9</sup>

More candidly, Dorothy Collins, wife of one of the senior administrators at I.U., Dean Ralph Collins, and later the long-time personal secretary of Chancellor Herman B Wells, spelled out for me her reservations, shared with others, about this appointment. She rightly noted, first of all, that Carl was "old," already just beyond the mandatory retirement age for university administrators, and that he had no children, apparently assuming, therefore, that he

would be out of touch with things that mattered to young people. But Carl soon overcame reservations like that and proved (at least, in his first years of service) to be a voice of support for “reasonable students.” Later, his self-styled “southern Indiana conservatism” and his personal views regarding the full authority and responsibilities of the board caused his reputation as a board member among the students to decline.

Carl had also annoyed Mrs. Collins at an early board meeting when, just after he had introduced an anti-discrimination policy statement, he told a smutty and racist joke. He also irritated a fellow board member because his questions about certain issues on the agenda delayed the meeting and prompted her to say, “Mr. Gray, if you had read the material sent to you ahead of our meeting, you would know the answers to your questions.”<sup>10</sup>

Unfortunately, at the time Carl joined the I.U. Board of Trustees, the university, like the rest of the nation, was in turmoil. The major national issues were the civil rights movement, which in many instances had become violent, ongoing examples of racial discrimination, in the North as well as the South, and, of course, the increasingly unpopular Vietnam war. Local manifestations of these anti-authoritarian attitudes included various arsons on campus, even one in the main university library, some lock-ins, rudeness or worse when certain national figures spoke on campus, and student morality in general.<sup>11</sup>

It is unfortunate, from my point of view, that Professor Thomas D. Clark’s magisterial three-volume history of the university stopped in the middle of this student protest movement and did not deal with what was going on in the later 1960s. It does, however, reach the point where President Stahr, exhausted by the heavy demands upon him caused by the student protests and by the major university realignment that he orchestrated, abruptly resigned his office in 1968. Happily, though, there is a fine dissertation that focuses on IU in Bloomington during the 1960s. Titled “Dissent in the Heartland,” this study by Ann Marie Winkoop is based upon campus publications and interviews with participants in “the movement.” It analyzes the activities of the



Board of Trustees and efforts by student activists, particularly by the African Americans, to end racial discrimination on campus and in the city of Bloomington and attempts, by all types of students, to end the university's *in loco parentis* role and to end U.S. involvement in the war in Vietnam. Although Carl Gray is not mentioned by name in this study, the work of the board of trustees in which he immediately took a leading role, are described and analyzed.

The best, though brief, source on Carl Gray as a trustee comes from one of the students that Carl was eager to support provided they conducted themselves with the proper decorum, and were respectful to those in authority. Edward W. Najam, Jr., now an attorney in Bloomington, responded to my published appeal in 1992 to Indiana attorneys for information about Carl Gray with a good letter about meeting Mr. Gray in 1968 and then seeing him in action at numerous trustee meetings over the next year. Najam had been elected Student Body President in April 1968 and as such "attended thirteen (13) public meetings of the Trustees and many private and informal gatherings." He then spelled out for me his impressions of Trustee Carl M. Gray:

Gray was an active and faithful participant in Trustee meetings. He would often remain silent for a time, but when he was moved to speak, he would sometimes actually stand to address the Trustees and hold forth as if he were addressing a jury. When he was agitated, he would stare intensely through his thick glasses, his face would become red and he would waive [sic] his arms in the air. He was a very colorful figure on a distinguished Board which included Frank E. McKinney, Sr., Judge Jesse Eschbach from Warsaw, Harriett Inskeep from Ft. Wayne, Donald Danielson from Indianapolis, Robert Menke from Huntingburg, John Early from Evansville and Robert Lucas from Gary.

Off the campus Mr. Gray also vigorously defended the University which was then under fire because of the social and political turmoil on the campus in the late 1960's. I remember when he appeared without prior notice and addressed the Senate Education Committee in Indianapolis. I recounted that event at the 40<sup>th</sup>

Anniversary of Student Government dinner in Bloomington on April 15, 1989.

Mr. Najam then favored me with a copy of his remarks on that occasion, which began with a review of the unsettled conditions in the nation, the state, and the university, what he called “the issues of the day.” The first “main event” on campus (that led to some arrests) he referred to was the demonstration against the Dow Chemical Company recruitment officers at the School of Business placement office in October 1967. Because Dow Chemical manufactured some of the napalm used in Vietnam, many students believed that allowing the company to recruit on campus made the university an accomplice in the war. Shortly afterwards, when Secretary of State Dean Rusk spoke at the I. U. Auditorium, he was “interrupted” by several demonstrators. Additional issues were more strictly campus concerns, such as fee assessments, women’s hours, student government relations with the state legislature, and, most disturbingly to some people within the state, a proposal to permit “open visitation” in the dormitories. This proposed policy “gave rise to Senate Bill 100 introduced by State Senator, now United States Congressman, Danny Burton of Indianapolis,” who conducted a hearing on it on January 31, 1969:

Without question, the high point of that hearing was an unscheduled and unanticipated appearance by I. U. Trustee Carl M. Gray, who was one of Indiana’s most esteemed trial attorneys . . . . On that day, Mr. Gray was irate, and he defended the students, administrators and Trustees in a highly emotional speech. He told Senator Burton that the Trustees had approved open visitation in some residence halls only after months of consideration and that the Trustees were not intimidated by student activists. . . . He concluded that it was only fair to give these splendid young people the responsibility they requested.<sup>12</sup>

Senate Bill 100 was ultimately tabled.

On at least one other occasion, Carl spoke out unexpectedly in stout defense of the students, and he also expressed his confidence

in them in private letters to even his most conservative friends. His favorite line on this matter seemed to be that “I believe in majority rule, and I believe that the majority of the students are here for an education, and not to take over or makeover the university.”<sup>13</sup> He also claimed to friends that it was his vote that provided the margin of victory in getting the open visitation policy adopted, even though, as he acknowledged, both his wife and “Mother” Wells were “mad as hell” about it.

During these stressful times, Carl, clearly one of the more conservative members of the board, was, as he said in perhaps a poor choice of words, “violently opposed” to radicalism; nevertheless, he tried to be fair to all students and keep the lines of communication open.<sup>14</sup>

Ironically, just two days after the *Indiana Daily Student* had announced Carl’s appointment as a new trustee, it also announced that a “free sex” club, officially named the Sexual Freedom League, was being organized on campus.<sup>15</sup> Carl’s reaction to this event is not known but as stated, he tried to be fair to all students, even those with views he considered extreme. He also tried to help formulate clearly stated policies regarding student (and faculty) conduct, particularly insisting that no mandatory student fees collected by the university could end up supporting visits and lectures by “radicals,” such as avowed Communists or various counter-culture advocates such as a Marxist historian from Columbia University, Professor Herbert Aptheker, or H. Rap Brown.

Other major changes occurred during the waning months of Stahr’s presidency. In April 1968, in anticipation of the changing character of IU throughout the state, now with seven campuses and more to come, John W. Ryan was lured away from his position as chancellor at the University of Massachusetts and appointed as IU’s vice president for the regional campuses. And student unrest continued, particularly as the push for “open guest hours” heightened, rumors about Stahr’s successor picked up and national developments, such as the violence associated with the Democratic National Convention in Chicago in August, had local repercussions.

As student Todd Kendall said during a “debate” with an *Indianapolis Star* columnist about life on campus and specifically about “open visitation” in the dormitories, “If you come from a small town and a strict religious background, this place is going to spook the hell out of you.”<sup>16</sup>

When at long last the Board of Trustees adopted a stringent Student Code of Conduct, one that spelled out the procedures to be followed when individuals were accused of misconduct that was designed to protect the rights of the accused, Carl was one of the main authors of that code.<sup>17</sup>

Carl’s first year on the board was a relatively quiet one, as he was learning what the job entailed. He did read the material in preparation for the meetings, and gradually became more and more involved. He learned what the major concerns of the students were concerning open visitation, racial discrimination, and student fees; he also came to know and like most of his fellow trustees. Overall, he kept a low profile, something not always easy for him to do, and he missed only one monthly meeting of the board that year. While things were relatively calm on campus, a welcome change from the underlying tensions came with the remarkable success of the IU football team in 1967. This team, under the tutelage of Coach John Pont and led by sophomore quarterback Harry Gonso, became known as the “comeback kids,” as they soared to a number of last minute comebacks in compiling a 9-1 record and earned IU’s first and only invitation to play in the Rose Bowl (on January 1, 1968). Its opponent in that game, also with a 9-1 record, was the University of Southern California, led by the already-famous (and later infamous) O.J. Simpson, who scored the game’s only two touchdowns, so the Trojans prevailed that day, 14-3. Of course, Carl Gray attended the game, as he had most of the others that season, and afterwards, in Los Angeles, he hosted an enormous (and enormously expensive) party in his suite at the Biltmore Hotel for other IU fans.<sup>18</sup>

In other developments on the athletic front, an aspect of the university in which Carl was deeply interested and involved, IU

changed basketball coaches in 1967, and Carl had a minor role in hiring, as a replacement for Lou Watson, a young, irascible, and incredibly successful man during his career at IU, Coach Robert M. Knight. These two men, both strong, opinionated, and blunt-spoken, became unlikely but very close life-long friends.<sup>19</sup>

The pace of change and problems picked up considerably during Carl's second year on the board, just as did his law practice, but he still managed to be present at all the meetings of the board that year, and increased his voice on issues. The key development that year, just after President Stahr's announcement regarding a major reorganization of the entire university, including a comprehensive upgrading of IU's "extension centers" scattered over the state and creating from them new "regional campuses," was the abrupt and totally unexpected resignation of President Stahr, announced in July 1968 and effective two months later.

In retrospect, it is evident that Stahr was exhausted by the heavy demands of his office. Indeed, he cited "presidential fatigue" as a primary factor in his decision to step down, expecting, instead, to return to teaching in a law school somewhere but probably at IU. As it happened, however, he was invited soon afterwards to become president of the National Audubon Society, a position he held for more than ten years, during which time membership in the society more than quadrupled.

Following Stahr's resignation from the presidency at IU, to be effective September 1, 1968, the trustees turned to former President Herman B Wells, who agreed to serve as interim president until a new, carefully chosen successor could be named. A presidential search committee, including four trustees, was appointed but in fact all the trustees, in whom the power to make the appointment legally resided, were members of the search committee. Indeed, Carl, although not among the four trustees chosen for the primary committee, became fully engaged in the process. As he pointed out in some letters to various conservative jurists and lawyers in Indianapolis, his priority was to find "an alumnus of the University . . . possessed with an abundance of common sense." He wanted to find "an able administrator," preferably one with "academic ability

also,” but “it is rare to find both qualities” in one person. Therefore, he said, “if it is necessary to sacrifice one of the necessary qualities, I am in favor of foregoing the great academic background.”<sup>20</sup>

In a similar letter to attorney James Tucker of Paoli, Carl repeated his priorities of looking for an IU alumnus “with a stiff backbone and an abundance of common, everyday horse sense and if he can count to ten and repeat the alphabet, he will satisfy [my] academic requirements.”<sup>21</sup>

Carl also received some unsolicited advice from these same conservative friends about whom *not* to appoint, namely liberals like Clark Kerr or indeed anyone with known leftist leanings. The process was a lengthy one with dozens of candidates under consideration. In the end, as recorded in print as early as November 5, 1968, but not officially announced until a bit later, the popular Dean of Faculties, Joseph Lee Sutton, was selected.

Much of the uncertainty and concern over the future of IU ended when the appointment of a new president was announced. As reported earlier but denied, on November 16, 1968, the *Indiana Daily Student* confirmed the rumor that “Sutton’s the one,” and interim President Wells congratulated the trustees on “a very wise choice.” The dean of faculties at IU since 1966, and formerly a popular professor of government (and winner of the Brown Derby awarded by vote of the students to the “most popular professor”), Dean Sutton did not meet Carl Gray’s criterion of having a Hoosier background or an IU degree (a native Oklahoman, Sutton had earned three degrees at the University of Michigan), but he had been at IU since 1953 first as a professor of government and a specialist in Oriental languages, and then as a high administrator, and Carl Gray supported his elevation to the top spot in IU’s administration.

Sutton thus became the university’s thirteenth president, but he claimed, when asked about this, not to be “superstitious” about his presidential number, noting that “a pretty good country” had started with thirteen states. Moving on to more substantive matters,

the newspaper listed five major issues the new president would have to deal with during his administration—university planning and reorganization, the controversial “open guest hours” plan, student dissenters, budget, and the role of students in forming administrative policies.<sup>22</sup> Certainly these issues cropped up and President Sutton made considerable progress in dealing with them all, but his years in office were surprisingly brief, as he retired in 1971, following the death of his wife, to spend more time with his children, and then, tragically, he died as the result of an automobile accident in April 1972.

One of his most significant decisions early in his term was to endorse and expand the plan to combine the Indiana University and Purdue University campuses in Indianapolis. This combination, established in 1969, became known as Indiana University Purdue University Indianapolis (IUPUI). Together with President Frederick Hovde of Purdue, these two farsighted administrators agreed to (in a meeting in Indianapolis, the details of which are still not known) set in motion the creation of a major urban university, one that today (2013) is the third largest and most comprehensive university in Indiana with a student body in excess of 32,000 students.<sup>23</sup>

Regarding student activism and disorder on campus, one of the perceived problems was the continuing agitation coming from an “underground” or unauthorized publication called *The Spectator* and housed in a building on campus. In its first attempt to limit the influence of *The Spectator*, the trustees, in a closed executive session in February 1969, banned university advertising in that newspaper. When the question of *the Spectator* came up again, Carl, who wholeheartedly supported the ban on advertising (and more), reminded his fellow trustees that *The Spectator* had a strong negative image in the state legislature, that any university-paid advertising in it was considered support for the paper and he stated his belief that this issue alone “caused the university’s budget to be cut by \$3 million,” so he favored, as did President Sutton, moving the paper off-campus.<sup>24</sup> One of the lasting images of President Sutton after his departure from office in 1971, was a picture of him, axe in hand, as he helped in its forcible removal.

In a less contentious mood, but also one intended to improve understanding between trustees and students, one of the trustees proposed to institute so-called “trustee-student forums” following each board meeting. At these forums the president and two trustees would meet with all interested students and discuss recent board actions and policies. Carl was one of the first two trustees to appear in such a forum when this initiative was implemented in the fall of 1969, and he often volunteered for other appearances. That Carl was effective in such settings is indicated by a letter from a faculty member that he received in 1970:

Dear Mr. Gray:

I was present in Whittenberger Auditorium when you and Bob Menke met with the students and answered questions which were directed to both of you.

Despite the delay in getting off this brief note to you, I want you to know that I was tremendously impressed by the answers you gave and the philosophy which you so articulately defended. I am convinced that if the Trustees of all our colleges and universities were as stalwart and logical as you that the problem of student protest and dissent would quickly be under control.<sup>25</sup>

In time, though, these forums did not serve their expected purpose, because few students bothered to attend and they were discontinued. Perhaps this happened because, as a relieved President Sutton reported to the faculty in his review of the 1969-70 academic year, the period had been “a peaceful one.” But there remained underlying tensions, well-illustrated by the appearance in October 1970, of William Kunstler, a self-described “radical lawyer” and most famous now as the defense attorney for the “Chicago Seven,” who had been tried that year for their role in the riot at the Democratic National Convention in 1968. Kunstler spoke to a huge crowd at the IU Auditorium on October 7<sup>th</sup> and his remarks, carried in full in the next issue of the *Indiana Daily Student*, referred to the need for change in American society, saying there is “morality in protest.” He said that some protests could be “moral,” but not “legal” and that “there is a vast difference between legality and morality.”<sup>26</sup>



His words prompted a letter signed by nineteen law professors, who spelled out their disagreement with Kunstler. They also led to an outburst from Trustee Gray who referred to the man who had defended a host of other radicals in well-publicized cases as “an alleged lawyer, who is calling for the destruction of the American legal system.” “To my mind,” he added, “to go to Mr. Kunstler’s show in the auditorium is something like going to the fair to see a prize jackass.”<sup>27</sup> Carl also fired off a letter to the director of the Indiana Memorial Union, who oversaw the activities of the Student Union Board, asking detailed questions about the funding of Mr. Kunstler’s appearance. He wanted to get his facts straight before sounding off any more. Harold W. Jordan replied promptly, and confirmed that “Mr. Kunster was paid out of our student program fee,” but he added that “on the same open forum which presents William Kunster and Dick Gregory, we are including Herbert Klein, President Nixon’s Director of Communication, and Senator Barry Goldwater.” In this rather lengthy response, Jordan went on to note that “we attempt to present all viewpoints. Isn’t this better than refusing to present Mr. Kunster and having a protest and/or violence on the campus?”

The Kunstler episode was one of the two that most energized Carl during his time on the board. The other one involved attempts to have a legal representative for the students attend the Board of Trustees meetings. This was anathema to Carl and he carefully researched the law and practices elsewhere as he mounted a strong and effective campaign against such intrusion on trustee prerogatives. He spent countless hours developing his case and circularized his fellow board members to stop such exploitation.

Although President Sutton was forced to take occasional leaves of absence (for health reasons) and suffered the loss of his wife, the mother of their four children, in 1970, it was still a great shock when he, somewhat like his predecessor, submitted his “resignation” and left the presidential office early in 1971.<sup>28</sup> It was also a shock to the university community to learn that, contrary to previous practices, the trustees named a successor-president the very next day. John W. Ryan, Vice President for Regional

Campuses, was the person selected to take charge of the university at a critical moment. At least he met one of Carl's earlier criteria for the office—he had an IU degree, a doctorate in political science, and despite the misgivings of faculty members all over the state (about the selection process, not the person chosen), Ryan proved to be an able and effective (and long-tenured) president of Indiana University. In time too, Carl and “John” became close friends.

After this new major change in the university's administration, even though Carl retained his membership on the board and continued to carry out his main duties, it seems that his enthusiasm for the position waned and he decided soon after his third three-year appointment (in 1972) not to accept another one if it were offered.

Carl, however, was elected by his fellow trustees to be the vice president of the board during what turned out to be his last three years on the board, and he occasionally, in the absence of the board president, presided at the meetings. This was the case at the meeting on March 24, 1973, when Carl clearly rushed through the agenda, insultingly refused to permit Tim Shaw, president of the Inter-Residence Halls Association, have his scheduled two minutes to speak (after he had traveled up to the Indianapolis campus for the meeting), and then hastily adjourned the meeting so that, as openly admitted, he and some of the other trustees could catch their plane to St. Louis in order to see an IU basketball game in the NCAA tournament.

The lead editorial in the *Indiana Daily Student* three days later, written by Steve Jacob, editor-in-chief of the newspaper, and titled “Hurryin’ trustees display arrogance,” particularly lambasted Trustee Gray and said that his rudeness toward Shaw “was totally uncalled for.” Continuing, Jacob said that

Gray's memory is short. It was only four years ago when Gray and other trustees appeared at a series of meetings on campus to explain their role to students. He was harassed with much the same arrogance he displayed at Saturday's meeting.

Unfortunately, Gray is an appointed member of the board. This means even if H.B 1759 allowing graduate seniors to vote for trustees is signed into law, Gray can't be voted out of office.

However, the bill could aid in eliminating future Carl Grays and temper much of the arrogance some board members now display toward students.<sup>29</sup>

At about this same time, in an outburst not recorded in the official minutes of the trustees' meeting but most vividly "recorded" in the memories of some of those who witnessed it, Carl had severely chastised another student, also an elected student government officer, who had used some profanity in his opening remarks to the board. Carl immediately jumped to his feet and stopped the presentation, and gave the student a tongue-lashing that probably was unlike any he had received before. Carl insisted on proper respect and decorous behavior by those who appeared before the board (just as he was unfailingly courteous and respectful in his appearances before high court judges).<sup>30</sup>

Despite the occasional criticisms he received, for the most part, Carl had enjoyed enormously the honor of being an IU trustee and the power it gave him in helping set and prioritize key university policies. He also enjoyed the "perks" of his high office and the association with key university people it permitted. But after almost nine years of service and on the verge of turning eighty years old, he decided it would be best to focus on what he liked best—being a lawyer in a small town. There were also some local problems. The health of his partners in life and law was declining; indeed both partners soon passed away, associate Ed Waddell the day after Christmas in 1976 and his beloved wife of over fifty years Eulala in the summer of 1978. Carl's life had undergone an enormous transformation.

## Trustee Carl M. Gray

### Notes to Chapter 8

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<sup>1</sup> See Dean Leon H. Wallace to Carl M. Gray, Aug. 8, 1958, and May 13, 1959, in Miscellaneous Correspondence, Carl M. Gray Papers, Petersburg.

<sup>2</sup> Author interview with Chancellor Wells, April 22, 1989.

<sup>3</sup> A copy of the program for “Carl Gray Day” makes up the cover illustration for the state bar association magazine, *Res Gestae*, Volume 10, Number 8, for August 1966. This issue, on page 6, also carried a large photograph of Carl, dressed formally in a tuxedo, as he addressed the Indiana Supreme Court on Law Day in 1963.

<sup>4</sup> Paul Rowe to Carl Gray, October 12, 1966, Carl M. Gray Papers.

<sup>5</sup> Enclosure in James E. Farmer to author, July 28, 1989, Ralph D. Gray Papers, Bloomington.

<sup>6</sup> “IP&L Announces New Pike County Plant,” *IPALCO News*, March 1962, 1-2.

<sup>7</sup> This case can best be followed in the pages of the *Petersburg Press* from 1964 into 1968, but see especially the February 28, 1968, issue, which reported the Supreme Court’s decision. See also *Graham Farms, Inc. v. Indianapolis Power & Light Co.*, 288 *North Eastern Reporter, 2d Series*, 656-667 (1968).

<sup>8</sup> Carl M. Gray to Allen Dick, March 16, 1968, Carl M. Gray Papers.

<sup>9</sup> *Indiana Daily Student*, January 5, 1967. This same issue of the campus newspaper also carried, on page 2, a story often wrong in its details about “the new I.U. trustee.”

<sup>10</sup> Author interview with Mrs. Dorothy Collins, February 16, 1988.

<sup>11</sup> Some examples of this rudeness came when Secretary of State Dean Rusk arrived to speak in support of the Vietnam War and was heckled to the point of being unable to complete his remarks. Earlier that same month (October 1967), former University of California president Clark Kerr was interrupted during his speech by literally a pie in the face. These incidents are mentioned in both the Wynkoop dissertation and Professor Clark’s history. See also Secretary Rusk’s gracious acceptance of President Stahr’s apology in a letter Stahr later shared

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with all members of the board. Rusk to Stahr, November 14, 1967, Carl M. Gray Papers.

<sup>12</sup> Edward W. Najam, Jr., to author, June 22, 1992, Ralph D. Gray Papers, Bloomington.

<sup>13</sup> "I.U. Trustees act on student violations," *Indiana Daily Student*, June 20, 1969.

<sup>14</sup> Carl M. Gray to Dr. Gary J. Scrimgeour, February 15, 1971, Carl M. Gray Papers.

<sup>15</sup> *Indiana Daily Student*, January 7, 1967.

<sup>16</sup> *Ibid.*, October 23, 1968.

<sup>17</sup> Indiana University Board of Trustees Minutes, June 6, 1969, IU Archives, Wells Library, Bloomington. These minutes in their totality are now on line, and I am grateful to archivist Dina Marie Kellams for her assistance in making them available to me.

<sup>18</sup> I learned that these expenses were so great that Carl never revealed to Mrs. Gray how much they were. Author interview with Attorney Justin A. Stanley, January 3, 1992.

<sup>19</sup> Author interview with Coach Knight, November 20, 1989. Both of these men were also outdoorsmen, avid hunters and fishermen, and Knight was a frequent visitor to Gray Acres and then to Gray's hunting and fishing camps nearby. The coach told me too that many people called him after an IU victory to offer their congratulations, but Carl was one who always called following a defeat, and that was what the coach appreciated. He also mentioned attending Mrs. Gray's funeral in 1978, shortly after Carl was no longer a trustee even though this happened in the midst of a playoff tournament. In his haste to get back in time for the trip with the team to the next game site, Knight had an accident (unreported in the news) on one of the back roads of Pike or Daviess County, sliding off the road into a ditch, but he still managed to arrive on time. I then asked the coach if he also attended Carl's funeral a decade later and he quickly answered, "No, why should I? He'd never know it."

<sup>20</sup> Carl M. Gray to Judge Edward Madinger, August 15, 1968, Carl M. Gray Papers.

<sup>21</sup> Carl M. Gray to James M. Tucker, October 15, 1968, *ibid.*

<sup>22</sup> *Indiana Daily Student*, November 16, 1968.

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<sup>23</sup> For details about the creation and early years of IUPUI, see Ralph D. Gray, *IUPUI: The Making of an Urban University* (Bloomington and Indianapolis: Indiana University Press, 2003).

<sup>24</sup> *Indiana Daily Student*, February 27, 1969, and April 19, 1969 (quotation).

<sup>25</sup> C. A. Rockwood to Carl M. Gray, June 3, 1970, Carl M. Gray Papers.

<sup>26</sup> *Indiana Daily Student*, October 8, 1970.

<sup>27</sup> *Ibid.*, October 17, 1970.

<sup>28</sup> Although the trustee minutes are silent on this matter, many believed at the time that the resignation was not voluntary, that Carl Gray and other angry trustees orchestrated the president's removal and immediately appointed his successor, Vice President John W. Ryan.

<sup>29</sup> *Indiana Daily Student*, March 27, 1973.

<sup>30</sup> In recent conversations with former IU treasurer, Jack Mulholland, who began attending board of trustee meetings in the early 1970s, and with a retired IU administrator, James Weigand, their most dominant memory of the "curmudgeonly" (Mulholland's term) Trustee Gray was his verbal "blistering" of the profane student. Nevertheless, as seen above, in his statements about the students in general, Carl had great respect for them and believed in their basic integrity.

## Chapter 9

### Final Years

“Today, [March 8, 1981], Carl Gray still makes a seven-day-a-week pilgrimage to his office, stiff fights cases with the enthusiasm of a young barrister, still voices his opinions with a razor-sharp tongue . . . “

Susan Hanafée, 1981

If Carl Gray expected his life to become more relaxed and to proceed at a much slower pace when he gave up his seat on the Indiana University Board of Trustees at the end of June 1975, he was to be disappointed. At the same time, though, he was exhilarated by the number of cases that came his way, which he always professed to enjoy, and by the heavy workload they represented. Indeed, his final years were remarkably full and active, and Carl refused to give in to the infirmities and limitations imposed on the elderly. Although many changes in his life and lifestyle inevitably occurred, he continued to practice law and kept busy doing what he liked best.

One major change occurred suddenly, soon after Carl resumed his full-time practice. That was the loss to cancer of his partner, Edward L. Waddle, who had been with Carl since 1946, first as a paid (\$35 a week) associate and then, in 1948, as a partner in the Gray and Waddle law firm, located at 802 Main Street (across the street from the Pike County Courthouse) in Petersburg. According to Mrs. Waddle, who (like her husband from Kentucky) was a graduate of Indiana University, Carl and Ed had made a “good team” over the years, one (her husband) being a “book lawyer,” the other (Carl) being “good in the courtroom and in getting business.”<sup>1</sup>

This latter talent of attracting new business was based, of course, upon Carl's reputation as an excellent lawyer. As one of Carl's secretaries in the 1960s put it, "If the case was a serious one, people came to Carl Gray."<sup>2</sup>

And nephew Tom Gray, also an attorney in practice with Carl and extremely proud of his uncle and an admirer of his courtroom skills, has confirmed that "getting business" was no problem at all. "Cases came in, one after the other, and we were always busy." Tom also referred to one big case that Carl didn't get—this was the grisly and shocking murder of an elderly couple in Petersburg in 1984. Indeed, the families of the two boys charged with the murder of Mr. and Mrs. William and Mary Hilborn had come to Carl initially, but they balked at paying the \$10,000 fee he requested. Instead, they hired an inexperienced (and less expensive) attorney to represent the boys who were promptly convicted and given long prison sentences. Afterwards, this attorney was sued by the parents for "inadequate" representation of their sons.<sup>3</sup>

Carl was also busy accepting awards and giving interviews for newspapers and magazine—stories that cropped up regularly as the fame and longevity of the Petersburg attorney continued to grow. Probably the major boost to his celebrity status came in 1978, when after well more than fifty years of practice, Carl received the prestigious "Fifty Year Award" from the Fellows of the American Bar Association at its annual convention in New Orleans, Louisiana.

Carl's special recognition was explained in the program as "an award to a lawyer, who, during more than fifty years of practice, had adhered to the highest principles and traditions of the legal profession." And in a three-page biographical sketch included in the program, he was further praised for his "fine legal mind" and skill as a practitioner, "and for 'the improvements he has made in the body of law in Indiana.'" Gray possesses a "remarkably resourceful and versatile legal mind. In arguments before a jury, he can be



courteously solicitous or he can roar with indignation. He is instantly ready to extemporize as the developments in a case may require. Still, he is a master in his preparations for a case.” This reference also mentioned Carl’s *Indiana Law Journal* article (1936) in which he “foresaw concepts of no-fault divorce and argued against a reduction of an injured person’s right to redress in this country” and referred to his second term in the Indiana state Senate, where he wrote the law establishing a state-wide property tax levy and a bonding authority for the construction of academic facilities at state universities. Also he served on the Civil Code Study Commission, which wrote the rules of civil procedure adopted in 1970.” The sketch concluded by calling Carl Gray “an adornment to the profession of law for more than 50 years.”<sup>4</sup>

Upon receiving this award, Carl became the first small town, county seat lawyer to be so honored. That evening, Carl shared the honoree platform with a truly distinguished group of attorneys including former Senator J. William Fulbright, former Ohio governor and chief justice C. William O’Neill, and Sterling Professor James William Moore of the law school at Yale University. Among his many writings, Moore was the author of a 34-volume book, *Federal Courtroom Procedures*.

The remarks by John Gavin of Yakima, Washington, in introducing, and then presenting this award to Carl at the American Bar Association’s mid-winter meeting in New Orleans, are priceless and deserve inclusion here:

Mr. Chief Justice, Madame Secretary, Mr. Chairman, Ladies and Gentlemen: We have met as lawyers over the years to honor those who have held the highest offices in our land, those who have graced the bench, and those who are great scholars. But we also present awards to others who are great lawyers, the men and women who labor all their lives for the cause of justice in large and small communities throughout our land. To such a man, we award tonight our prestigious 50 Year Award. We found Carl M. Gray in

Petersburg, Indiana. Now, that is really not true. Everyone in the State of Indiana knows Carl M. Gray. He comes here tonight in his 57<sup>th</sup> year of active practice, to honor us by becoming the recipient of this award.

Mr. Gray was born near Petersburg some 82 years ago and he commenced his practice in that community after service in World War I. He is typical of the lawyers who are the real cornerstones of our great profession. He was a successful young prosecutor, an esteemed State Senator, the President of his County Association, President of the Indiana State Bar Association, a Regent and a Member of the Board of Trustees of the University of Indiana (sic) from which he graduated. His civic duties, those beyond his duties as a lawyer, were wide and well appreciated. He is a long time member of the American Bar Association, he is a Fellow of the American College of Trial Lawyers, a Fellow of the American College of Probate Counsel, and he also is one of our own, a Fellow of the American Bar Foundation. In 1966, the State of Indiana, through its Bar Association, presented him with its Distinguished Service Award. No one ever received it before and no one has received it since. With all these honors and these accolades, he remains a delightful gentleman, probably as young as he was the day he came back from the wars, went to Petersburg, Indiana, and attempted to borrow a thousand dollars from the bank to go into practice. He was turned down. You will all be delighted to know he now owns the bank (laughter and applause). He married a young girl who was also a native of Southwestern Indiana. He remains married to the same, young, pretty girl who sits right there, Eulala, his wife, and he frankly admits that if it were not for her love and support he wouldn't even be here tonight. (Applause)

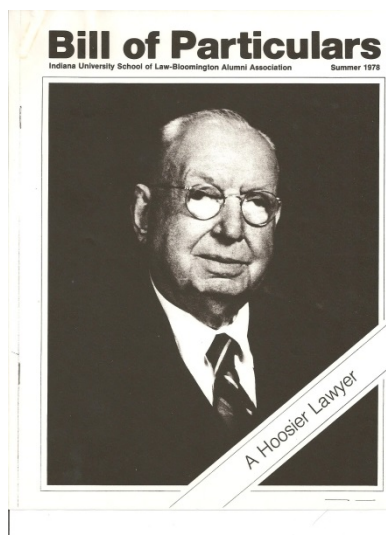
I received a letter from Chief Justice Givan of your Supreme Court who extends to you, Sir, the congratulations of the entire State of Indiana and regrets that he cannot be here. If you would step forward, I would like to read to you the inscription on this award that we are giving you. (Applause)

"The 1978 50-year Award is awarded by the Fellows to Carl M. Gray. He has been engaged in the active practice of law during all of which time he has manifested adherence to the highest

principles and traditions of the legal profession, and a service to the community in which he lives.”

I want to present to you a man whom I know none of you could successfully compete against in a Jury Trial in Pike County, Indiana. (Laughter and applause).

Carl’s remarks that followed were more perfunctory, but they included a tribute to his wife (quoted later) and a bit of Carl’s philosophy of service which included the need to improve the legal system:



We have an obligation to render service outside of the Courtroom in order to improve our system of jurisprudence. In this busy world, it occurs to me that we do not take the time to realize the heritage we have. We neglect to think of the tremendous sacrifice that was made by our forefathers in carving this Nation out of the wilderness and establishing the best system of government under God’s guidance that has ever been established on the face of this earth. (Applause) As a part of that system, we have a system of jurisprudence which is unexcelled; but we have the obligation to make a contribution as members of the Profession to improving that system in order that it will meet the changing conditions of a progressing and advancing Nation. The Bar has met the challenge in the past, but there is much to be done in the future. It is easy for me to stand before you and say to you that I am grateful, that I am thankful for this award; rather than to use mere words, I hope that I shall have an opportunity to make some slight contribution to improving the system of our jurisprudence in order that it may the serve the needs of this Nation, and the time here now when we need desperately to improve [it]. If I can make some little contribution to the improvement [of our] system of jurisprudence, it means more than for me to say I am grateful and I thank you. I do thank you from the bottom of my heart for this

tremendous honor you have conferred upon me. I hope I shall not fail. (applause) (applause)

Eulala had accompanied Carl on their train trip (Mrs. Gray refused to fly) to this meeting, which included a dinner for Mr. and Mrs. Gray with Chief Justice of the United States Supreme Court Warren E. Burger and which happened to be the last trip for this widely traveled couple. Shortly after returning to Petersburg, Mrs. Gray suffered a stroke and was hospitalized in Vincennes, where she died some ten days later, on March 12, 1978.

Appropriately, in his acceptance speech of the American Bar Association Fifty Year Award just a month earlier, Carl had expressed his love and gratitude to his wife in these words: "I wish to recognize Eulala, who has been my loving and devoted companion through the years. What I have accomplished has been largely due to her guidance and her efforts and her comfort, and her consideration. There is no way that I could repay her for the many things she has done for me. She has been my guiding star."<sup>5</sup>

Indeed, stunned and saddened by the loss of his help-mate, Carl was, by his own estimation, unable to work for about a year, but then he recovered, overcame some health problems of his own, undergoing both heart and eye surgeries in 1980, and was back on the job in full swing, often working six or seven days a week and setting a pace that his younger partners could not emulate.

Carl's philanthropies increased at this point in his life, largely to the benefit of his church, the Main Street Presbyterian Church in Petersburg, and his favorite educational institution, Indiana University. For the church, Carl donated the funds for an exquisite stained glass window that helps beautify the sanctuary and is dedicated to the memory of Eulala. It is matched by an equally beautiful and impressive window dedicated to the memory of Grace Mellinger of California, who was the childhood friend of Eulala and

whose family, upon Grace's death in 1973, had Carl establish the Mellinger Trust Fund at the church for various charitable purposes.<sup>6</sup> Both of these windows were dedicated during the worship service on July 8, 1979, with Carl being one of the speakers. The Grays had already established, in Eulala's name, a Music Fund at the church, used primarily to assist interested students in furthering their musical training.



It was to the university that Carl made his most substantial gift. It seems that Carl used a major part of the assets he had received from his wife's resources, which included oil-producing lands at Monroe City, in order to establish a very sizable endowment fund (a little over \$200,000) at the Indiana University Foundation, which was to be used, in equal amounts, at the university's two law schools.<sup>7</sup> The Indiana University School of Law, Bloomington, decided to use its bequest to establish a Program in

Trial Advocacy. The Indiana University School of Law, Indianapolis, opted to use

its endowment income to establish the Carl M. Gray Professor of Advocacy, and Dean William F. Harvey of that school, upon being invited to become the first Carl M. Gray Professor of Advocacy, immediately



**Harvey, Federal Judge Pell, and Gray**

accepted the honor and made plans to resign the deanship in order to do so. Dean Harvey, Carl's friend and a distinguished teacher and scholar (the author of some fourteen books, including a series of works on trial procedures), said at the time of his appointment that he was "highly honored," and was especially pleased that it carried the name of Carl M. Gray, "truly one of the outstanding members of the legal profession in this state and the nation . . . . His dedication to the law and its improvement, his commitment to the educational programs of Indiana University, his efforts to improve society in so many ways, and his brilliant advocacy, are high standards by which people may live."<sup>8</sup>

When Professor Harvey was officially installed as the first Carl M. Gray Professor of Advocacy Law at a black-tie event in the Convention Center in Indianapolis in 1981, attended by a number of high-level legal dignitaries from across the state as well as all the top administrators of the university, the honoree, reputedly a man whom President Reagan had considered nominating for a seat on the United States Supreme Court, was most gracious in accepting the professorship, and expressed his gratitude to the university and to Mr. Gray, who of course also attended the event.<sup>9</sup>

As time passed and Carl's years in practice reached and then surpassed the fifty-fifth—and then the sixty-year mark (in 1980), he began to get more and more attention in the media. One of the first



such articles about this unique, long-lived, still energetic, and witty octogenarian was a piece in 1981 by staff reporter Susan Hanafée and published in the *Indianapolis Sunday Star Magazine*. Titled “Still on the Legal Scrimmage Line,” this well-researched article revealed many interesting and previously unknown facts about the Petersburg attorney. Of course the author repeated the familiar parts about his service in the Indiana State Senate and his authorship of two bills regarding property taxes and bonding authority for the state universities, but she added bits about him declining a chance to run for a seat in the United States Senate and intriguing details about some of his cases.

Other articles about Carl Gray were a long feature story in a new regional magazine, with Carl’s image on the cover, by Alan LeMond; two well-researched and revealing articles in area newspapers (in Jasper and Evansville), and, perhaps, most surprisingly, a *U.S. News and World Report* article on senior citizens still active and making “contributions” to their communities.<sup>10</sup>

Although not mentioned there, these contributions, in a literal sense, included support for many groups as well as individuals. In

addition to the major gifts previously mentioned that went to Carl’s church and to the law schools of his university, Carl continued his support of local organizations. Carl and Eulala Gray had begun in 1952 to give out “Good Citizenship Awards” through the local 4-H chapter to several outstanding youngsters, ones who had been exemplary in their conduct. Initially these awards amounted



Paul Pancake and Mike Murray present Carl Gray The Distinguished Service Award. It is given by the Pike County Scouting Committee, for outstanding community service. Murray and Pancake are co-chairmen of the Pike County Scouting Committee.

**Receiving Scouting Award, 1983**

to \$25 for each recipient, but by 1980 this amount was up to \$100 each. The Grays also supported the city's Little League baseball program as well as the local Boy Scouts of America in various ways. At one point, Carl donated a chapel for the use of the scouts at their summer camp near Arthur, and Carl continued his practice of distributing lavish Christmas gifts, usually dozens of turkeys, to his office employees, various high level administrators at Indiana University, and other friends and neighbors.<sup>11</sup>

It may also be mentioned that, during Carl's long tenure as an Indiana University trustee, a voluntary position, but one for which expenses incurred in performing this service were reimbursed, Carl always returned his "trustee money" to the university with the instruction that it be passed on to the university's law schools.<sup>12</sup>

Examples of Carl's professional activity and his ongoing contributions to the law during the last decade of his life can be found in the court records of two murder cases, *State v. Hise* (1980-81); and *State v. Willis* (1984 ffg.), in which Carl represented the defendant, the persons accused of committing the crime, both times. Moreover, as a responsible "officer of the court" and as his own investigation indicated, Carl had his clients plead guilty and then he worked diligently to get reasonable and equitable plea agreements. Soon after being sentenced, however, both Peggy M. Hise and Forrest M. ("Sonny") Willis had second thoughts about what they had agreed to and sought redress.

The Hise case became one of Carl's most interesting ever, and there is an unusually full record of it in both his own case files and in the state's appellate court archives. These files reveal Carl, despite his age, at his best and in full command of all the resources available to a criminal defense lawyer. Eventually, however, these records also indicate that Carl was slowing down a bit and was unable to provide, for example, sufficiently prompt services for Peggy Hise after the trial was concluded.



It all began in late February 1980, when Mrs. Hise shot her alcoholic and abusive husband in their house trailer in Winslow. She did so, as she later testified, to save herself and her three young daughters (by her previous husband), not intending to kill or even wound her spouse, Edward Hise, but just to scare him and to stop his abusive behavior at that time. But the bullet did hit the man, who died in the ambulance as he was being transported to a hospital. And Mrs. Hise was arrested and jailed in Petersburg upon preliminary charges of murder.

Carl, appointed by the Pike County Circuit Court as her attorney *in pauperis*, accepted the case and left nothing undone as he prepared the woman's defense, making sure too that "the state" toed the line in its handling of the case. He was also most solicitous regarding the interests and welfare of the three children, aged 11, 10, and 7, and his gentle treatment of the girls while taking their depositions as witnesses to the crime was impressive. His brilliant interview with Mrs. Hise, as he was investigating the case, demonstrates his ability to get full details regarding an event, even though the interviewee was not very articulate and obviously biased. Using his courtroom technique of asking apparently random rapid-fire questions in this private interview, which ran to 30 typed pages when completed, he was able to get into the record a complete account of the tragic event, which had been witnessed by all three of the shooter's daughters.<sup>13</sup>

Eventually, shortly before the trial was scheduled to begin, Carl persuaded his client to accept the plea bargain he had arranged with the prosecutors. This involved Peggy Hise changing her plea of not guilty to the original charge of murder, but pleading guilty to voluntary manslaughter, and accepting a sentence of six years imprisonment, with all but four years and three months suspended. In addition, with credit for time already served and double credit for "good time behavior" during her imprisonment,

Peggy's minimum time to be served was set at 624 days or approximately one year and eight months.

The special judge appointed to hear the case, Howard A. King from Jasper, accepted the plea agreement. He also accepted and ordered Carl's carefully itemized statement of fees of \$5,022.07 to be paid. Interestingly, Judge King received \$25 a day for his time in hearing this case, whereas Carl set his fees at \$75 an hour for time spent in court (16 hours), and at \$50 an hour for time spent in office work (68¾ hours); his secretary was paid \$5.66 an hour for seven hours of her time, and there was \$344.97 in expenses to be reimbursed, for the total of \$5,022.07. These expenses included \$72.50 paid to a psychiatrist in Evansville for his examination and report on Mrs. Hise, in which he found Mrs. Hise not to be insane before, during, or after the shooting, and that she was competent to stand trial.<sup>14</sup>

The case file also contains some interesting correspondence after her incarceration. She was quite unhappy with conditions at the prison, where life is "the pits," and she wanted Carl's help in getting an early release. Carl answered that he had just had eye surgery on June 24 and couldn't get new glasses until August, but he said that in early August he would visit her in prison and they could work out future plans. "I assure you," he declared, "I desire to help you."<sup>15</sup>

Nevertheless, disappointed with Carl's delayed action, Peggy hired a new lawyer, Gerald Thom of Jasper, who filed a petition for "post-conviction relief," basically a request for early release, because her children, then under the care of her mother in Telden, Illinois, needed her. Peggy's mother had become ill and was no longer able to care for the children properly. Although the State opposed the petition, the court accepted it, reduced Peggy's sentence to time served, and permitted her to go to Illinois. She was, however, to remain on probation for the full six years of her original sentence.

The second case under consideration here, which was ultimately appealed to the Indiana Court of Appeals, stemmed from “Sonny” Willis killing Bonnie Whitney on November 8, 1982, at the American Legion Hall in Winslow, Indiana. As revealed in later testimony by an Indiana State Police officer, Detective C. M. Perkins, on the day of the shooting, Willis’s wife and two children were at the American Legion Hall when Willis showed up to join his family, bringing with him some wine. He was ordered to leave the premises by Bonnie Whitney, the Legion bartender, and did so, but soon returned. When another “altercation” occurred, Whitney tried to call the police but Willis pulled out an automatic .22-caliber pistol, which discharged, fatally wounding the bartender.<sup>16</sup>

Willis’s trial was held before Special Judge Robert L. Arthur (of the Daviess Circuit Court) in the Pike Circuit Court in Petersburg. Willis was represented by Carl Gray and William C. Beckman (Carl’s law firm at that time was Gray, Chappell and Beckman), who arranged, in consultation with Willis and his family, a plea bargain agreement, which was accepted by Prosecuting Attorney Mark Sullivan (who previously had been one of Carl’s partners) and approved by the court. A sentence of 30 years, along with probation, too, was agreed to, the terms of which were “read aloud to the defendant [in court] on April 4, 1984, by his attorney.” The sentence agreed to, less 524 days of credit for time already served, was imposed and Willis was sent to the state reformatory in Pendleton.

Six months later, however, Carl, on Willis’s behalf, went back to court and filed a motion on October 15, 1984, for “a modification of the sentence,” because Willis, who had heart disease, was in “poor health.” This motion was denied the following day, and Willis was returned to Pendleton.

But this issue kept cropping up again and again. Willis had become something of a “jailhouse lawyer” as he pored over various

law books while in prison and then, dissatisfied with the results in his case from Carl Gray, Willis hired an Evansville attorney, John D. Clouse, who filed a petition for “post-conviction relief.” Hearings on this matter occurred in Petersburg in August, September, and December 1985, but then this petition was denied.<sup>17</sup>

A corrected petition was filed and a rehearing occurred in early 1986, when again the petition was overruled. This led to a new and different trial, in which Willis charged that, in the original trial, he had not received “effective assistance of counsel,” and that Mr. Gray had made promises to him that were not carried out. These promises were that Willis would serve only three years and that the prison accommodations would not be harsh.

Interestingly, for historical record, at this point near the end of his illustrious legal career, Carl was brought to court and had to testify about his career as well as the statements, or “promises,” he had made to Mr. Willis.

Prosecuting Attorney Mark Sullivan handled the direct examination of Carl in this *Willis v. State* case, and he began with a seemingly innocent question, “Do you have any experience with criminal defense work?”

Gray responded, “Well, I don’t, I didn’t keep a record of the number of criminal cases, but, uh, I’ve defended somewhere in the neighborhood of forty or forty-five murder cases . . . and many different criminal cases. There is pending now probably twenty-five or thirty cases scattered all over southern Indiana.” (So Carl’s practice at that time was, indeed, heavy.)

Regarding the Willis case, Carl testified, in discussing the plea agreement with the defendant, “we had to be absolutely frank with him and tell him what our professional opinion was after a thorough investigation. . . . We left nothing undone in the preparation of his case for trial.” Carl then explained how the terms

of the plea agreement were presented. “After the plea bargain agreement was reduced to writing, Mr. Beckman and I met with Mr. Willis and the members of his family in our conference room. They went over the plea bargain agreement, the whole family, with Mr. Willis. They were in there for an hour, hour and a half, and they had an opportunity to read it and thoroughly understand it. And, not only that, he didn’t sign the plea bargain agreement that evening. We went to the jail after that. He had a copy with him after the conference, and after the family urged him to sign . . . . We explained everything to him. We explained the sentences to him all the way through.”

Sullivan then asked, “Did you tell him he’d only serve three years?”

“No, of course not.” Carl replied. “How could I tell him that? He was told, though, that he would get credit or double time, for good behavior in prison.”

Sullivan: “Did he understand the fifteen-year maximum?”

Gray: “Why, certainly he did.”

Finally, in regard to the amount of time his firm had spent on this case, Carl testified that the exact number of hours were not known, but, as the sheriff can confirm, “there was seldom a day that one or the other of us [Gray or Beckman] wasn’t over at the jail to confer with him.”

Mr. Clouse’s cross-examination was respectful, but he did bring up the matter of Gray’s age and his long years in the practice of law, and attempted to get Gray to agree that the sentence of thirty years in prison and/or probation also for thirty years, was confusing to a layman, but Carl refused to make that concession. “No, no, no.” was his answer to one question on this point.

In further discussion, which evolved into something more like a conversation than an interrogation, Clouse suggested to Mr. Gray that, “like most mortals, sometimes you have trouble remembering things . . . .”

“Yes,” Carl replied easily, “I’m not infallible.” Then he used a favorite line of his, “I’ve made mistakes in the past and I hope to live long enough to make a few more.” And on the point of having any sensory impairments, Carl interjected, “Yes, I’m ninety years of age and I don’t hear as good as I did when I was sixteen.”

“And what about your vision? Any impairment?”

“Yes sir. I’ve had cataracts removed from both eyes.”

“And, like most cataract patients, you wear thick glasses.”

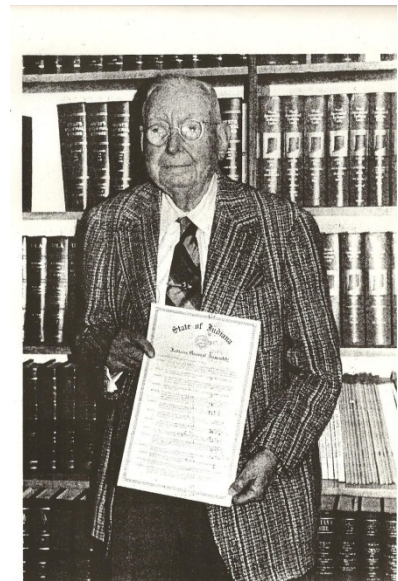
“Yes.”

“I’m not being critical.”

“I know you’re not. . . . Facts are facts.”

Finally, in his brief submitted following this hearing, Attorney Clouse made the point that his client held “no personal animosity towards his trial counsel,” now ninety years old, “having ably and honorably served the Bar for the incredible period of sixty-nine (69) years. However, in this particular case, he, as we all occasionally are, was simply wrong.” Fortunately for Carl, the appeals court (this time the Indiana Court of Appeals) did not agree, and Mr. Willis remained incarcerated at Pendleton.<sup>18</sup>

In addition to his still heavy caseload as an attorney, in the mid- to late 1980s, Carl made a number of public appearances. In



**Carl M. Gray Papers,  
Petersburg**

1987, during the sixteenth anniversary of his service in the Indiana General Assembly as the state senator for Pike and Gibson counties, Carl returned to Indianapolis and to the state capitol, where he was recognized and honored with a lengthy joint resolution adopted by the Indiana State General Assembly on July 18, 1987, and he was invited to the podium in order to make a few remarks. Rather than simply thanking the senators for their gesture and making some platitudinous statements, Carl used the opportunity to, in a bipartisan way, endorse Republican Governor Robert D. Orr's proposal for increased educational funding. He also, as was his custom, injected some humor in the occasion. Remembering that, in the 1920s, when he was a senator Prohibition was a big issue, he told about a fellow "prohibitionist" senator (perhaps now we could call him a flawed Prohibitionist), who often "told his audience that he had never tasted whiskey, beer, or wine." After an appropriate pause, Gray added (with a giggle), "he drank gin." Then Gray, "who was assisted in his steps" by a handsome hand-carved walnut cane, departed Indianapolis and traveled to Bloomington to see an IU basketball game.<sup>19</sup>

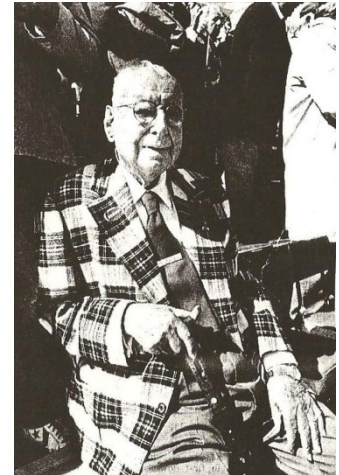
He also served as one of the eulogists at a memorial service for former federal judge (and close friend), Cale Holder. This service was held in Judge S. Hugh Dillin's courtroom at the United States District Court for the Southern District of Indiana. There were six other speakers.<sup>20</sup>

And earlier, in 1982, Carl had arranged for a benefit dinner for the Buffalo Trace Council of the Boy Scouts of America. As a sure way to boost attendance and the money generated, Carl invited, and then introduced, his old friend, Coach Bobby Knight of Indiana University. This event was held on May 13, 1982, at the Executive Inn in Evansville, and was a huge success.<sup>21</sup>

Another sports-related public appearance came in 1984 when Carl observed the seventieth anniversary of his membership on both the Petersburg High School football team and the Indiana University freshmen team. In commemoration of those events, Carl gave all the members of the high school's current football team tickets to an IU football game. Just prior to their bus's departure for Bloomington, Carl personally handed each player a \$2 bill "for refreshments" at the game.

Finally, although not a speech, Carl wrote an impassioned letter to the editor of the Petersburg *Press-Dispatch* in late 1979 in which he came out strongly against a teachers' union and the right of teachers to strike. The letter was in response to one from the president of the Pike County Teachers Association, Richard Wallace, which stated that teacher contracts could not be cancelled in the middle of a school year. "Poppycok, Mr. Wallace, poppycock . . . . You are dead wrong," said the irate attorney. Carl went on to say that "insubordination" is grounds for cancelling contracts, and that "it is insubordination when a teacher . . . refuses to teach school when schools are in session."

Carl concluded his diatribe with the point that "the citizens of Pike County," who "pay the bills" and are "vitally interested" in the schools, "do not propose to have the Board of School Trustees adopt the [teachers'] proposals [in regard to] the management of the schools." We are "not going to stand idly by and permit this to be done."<sup>22</sup> Eventually, though, that voice which had spoken out on so many issues was silenced.



Football fan, 1987, at 92

There was genuine sadness throughout Petersburg when news of Carl Gray's death swept through the city. The aged attorney had become ill early in April 1989, and was taken to the Good



Samaritan Hospital in Vincennes, where he died late in the evening, on Friday, April 7, 1989.

The *Evansville Courier's* obituary was headlined, "Dean of Indiana lawyers, Carl Gray, dies at age 93." The long notice pointed out that Carl had begun practicing law in 1920, "and continued trying cases until his death . . . . Although age had weakened his vision and he had suffered at least two bad heart attacks, Gray kept his spirit and vigor. 'They gave me a pacemaker and told me that they hoped it could keep up with me,' he said in a 1981 interview." The obituary also said that Carl was "known by his peers as a 'master' of the courtroom, combining his quiet intellect and rich memory with a talent for persuasion." A former Pike County prosecutor, Jerry McGaughey, the man who had last faced Carl in the Peggy Hise case, said that "Carl could sway the jury and pull them around to his point of view." He also called him an "honest attorney" and a "worthy opponent. When you went against him, you had to be well prepared." One of Carl's former partners, Pike Circuit Court Judge Marvin Stratton agreed with McGaughey that "Carl's foremost weapon was his sharp memory. That's what made him an excellent attorney—his memory . . . facts on former cases, precedents—he had an almost total recall. He could quote those cases in court without notes."<sup>23</sup>

The funeral service, held at the Harris Funeral Home in Petersburg on Tuesday, April 11, was conducted by the Reverend William O. Harris, a younger man but a long-time friend (and former yard boy) of the lawyer. According to my notes taken at the time, after some opening Scripture passages were read by the minister at Carl's church, Bill Harris "spoke movingly, with great wit and eloquence, evoking nods of agreement as he recalled episodes in the remarkable life of a remarkable man." As Bill pointed out, Carl had been in court just three weeks earlier, and had practiced law, therefore, fully sixty-nine years. Bill emphasized Carl's values--work, and concern for others. He could be forthright,

and sometimes said things that were “less than charitable,” but “he forgave and he forgot.” In fact, he had recently commented that he “had no enemies.” Attendees at the funeral included federal district court Judge S. Hugh Dillin and a large contingent of mourners from Indiana University, led by Chancellor Herman B Wells and President John W. Ryan.

## Notes to Chapter 9

### Final Years

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<sup>1</sup> Author interview with Mrs. Edward (Jerry) Waddle, November 21, 1991. Jerry added that, following her husband's demise, Carl was "unlucky" in the choice of some of his subsequent partners, one of whom was killed in a car crash, another one simply departed, without notice, but he took a number of clients with him, and, finally, one (Carl's nephew, in fact) who was officially censured by the Disciplinary Commission of the Indiana Supreme Court for conduct detrimental to the profession of law. This young attorney was probably saved from permanent disbarment only because of his association with his highly respected uncle. Author interview with former Indiana Supreme Court Chief Justice Richard M. Givan, July 12, 1989.

<sup>2</sup> Author interview with Wanda Novak, September 12, 1990.

<sup>3</sup> Author interview with Thomas Gray, July 3, 1989. Tom, incidentally, was greatly interested and supportive of this book project. It was a great loss, personally and to this project, when Tom died suddenly, of heart failure, during a skiing trip to Colorado in 1995. He was 48 years old.

<sup>4</sup> Dinner program, Fellows of the American Bar Association, February 11, 1978, Carl M. Gray Papers, Petersburg.

<sup>5</sup> Mrs. Gray (1894-1978), the daughter of Dr. Ashley W. and Anna Mallory Myers, had been born and raised in Monroe City, Knox County, Indiana. Following their marriage in Indianapolis in 1927 while Carl was serving in the Indiana State Senate, the Grays lived in Petersburg where Mrs. Gray pursued her interests in music, her house, and her gardens. She loved entertaining guests and frequently carried flowers from her flower beds to people in hospitals and other shut-ins. *Press-Dispatch*, March 16, 1978. See also the biographical sketch on Mrs. Gray by Lucinda Dillon, in the Ralph D. Gray Papers, Bloomington, Indiana.

<sup>6</sup> In the Mellinger will that Carl wrote in 1973, setting up the Mellinger Trust Fund, he specified that only AAA-rated securities be used for its investments. Accordingly, the fund bought stock in General Motors, Chevron, Indianapolis Power and Light, and the Union Pacific Railroad companies. When the railroad wanted to buy back its stock at a much higher value than originally set, the church trustees agreed to sell, and used the money to invest in Boston Celtics stock, thus giving the church members even more reason to root for the Hoosier-born Celtics star, Larry Bird. Main Street Presbyterian Church Newsletter, n.d. (ca. 1980), Ralph D. Gray Papers, Bloomington.

<sup>7</sup> The value of this gift to the university, the Knox County farm, was not determined until the Indiana University Foundation sold the property for \$301,500 and \$50,000 each was passed on, as Carl had directed, to the Main Street Presbyterian Church in Petersburg and to Vincennes University. The remaining \$201,500 constituted the gifts to the two law schools, which, according to economist Marcus Morton in a recent communication to the author, would have a current (2014) value “in excess of \$730,000.” The details of the farm’s sale had been explained to Carl in a letter to by Foundation President William S. Armstrong dated August 29, 1978. I am indebted to John Keith, a staff member at the IU Foundation, for finding this letter and passing its contents along to me. Furthermore, since this single gift was approximately half the amount of Carl’s total cash contributions to the university, it is easy to see how substantial his support was over the years.

<sup>8</sup> *Press-Dispatch*, September 14, 1978.

<sup>9</sup> There have now been three Carl M Gray Professors of Advocacy. Upon Harvey’s retirement, Professor James W. Torke succeeded him. An excellent profile of Professor Torke, both a distinguished scholar and teacher, is may be found in an article by one of his colleagues, Jeffrey W. Grove, “Tribute to James W. Torke, Carl M. Gray Professor of Law,” *Indiana Law Review*, vol. 38 (2005), 565-75.

The third Carl M. Gray Professor, also a most distinguished and accomplished scholar and teacher, is George E. Edwards, a Harvard-educated man who has taught both in America and abroad while developing an expertise in international human rights. His work has included serving as an expert witness in cases before the Guantanamo Bay Military Commission and as a representative of the National Bar Association at the United Nations. Author interview with Professor Edwards, May 17, 2002.

<sup>10</sup> See, for examples, Alan LeMond, “Carl Gray: An American Original,” *The Patoka Valley Citizen*, Vol. 1, Number 6, (June, 1981), 15-18, 28; Alan Julian, “Shades of Gray: At 85, Petersburg lawyer is still having fun in court,” *Evansville Courier*, May 8, 1981; Vanessa Zimmer, “The Law According to Gray,” *The [Dubois County] Saturday Herald*, October 22, 1983, and George White, “I Don’t Know How to Loaf at 86,” *U.S. News and World Report* (July 2, 1984), 50. One of the picture captions in Julian’s well-illustrated piece consists of a Gray remark: “They had no television or anything like that [when I started]. So, we entertained them.”

<sup>11</sup> Author interview with Philip Hindahl, a Winslow attorney who had been given his start in law by Carl Gray, October 24, 1992. For the appropriateness of the gift of turkeys, see Michael Zimmer’s article, “Turkeys,” in *The Patoka Valley Citizen*, Vol. 1, Number 5 (May 1981), 11, 16, 21, 24, 28, 46. Zimmer

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pointed out that Indiana was then the ninth ranking state in the nation in turkey production, and that 5.5 million of the state's total production of 6 million birds came from the "pocket" counties of southern Indiana, which was of course "Carl Gray country."

<sup>12</sup> Author interview with Wanda Novak, September 12, 1990.

<sup>13</sup> Case file, *State v. Hise* (1981), in the archives of the Indiana State and Appellate courts, Indiana State Archives, Indianapolis, and in the Case Files of the Carl M. Gray Papers, Petersburg.

<sup>14</sup> Ibid.

<sup>15</sup> Carl M. Gray to Peggy Hise, July 20, 1980, *ibid.*

<sup>16</sup> Case File, *State v. Willis* (1984), *ibid.*

<sup>17</sup> Ibid.

<sup>18</sup> The court decision was reported at *498 North Eastern, 2<sup>d</sup> Series* (1986), 1029.

<sup>19</sup> Kyle Niederpruem, "Ex-state senator uses honor session to plug Orr plan," *Indianapolis Star*, January 16, 1987; Jim Capozella, "Indiana Legislature passes resolution honoring Carl Gray," *Press-Dispatch*, January 29, 1987.

<sup>20</sup> Judge Holder Memorial Service Program, United State District Court for Southern Indiana, 1983, Carl M. Gray Papers, Petersburg.

<sup>21</sup> Dinner program, Miscellaneous Folders, *ibid.*; see also Mark Tomseth, "Bobby Knight, a good scout," *Evansville Courier*, May 12, 1982. This column was both a promotional piece about the forthcoming dinner and a document about the friendship between Knight and Gray, which dated from 1971.

<sup>22</sup> Clipping, *Press-Dispatch*, n.d. (1979), Carl M. Gray Papers, Petersburg.

<sup>23</sup> *Evansville Courier* April 9, 1989

## Chapter 10

### Legacy

“Carl Gray . . . is one of the truly great people I have met since being at Indiana.”

Coach Robert M. Knight, 1989

**I**t is almost impossible to summarize the life and accomplishments of Carl M. Gray (1895-1989). We know that he was an outstanding trial lawyer, brilliant and blessed with a prodigious memory, that he could mesmerize juries and often get them to accept his point of view, and that he was in practice for close to sixty-nine years, but he was much more than just that. He made wide and deep tracks wherever he went, permanently impacting all the institutions and organizations with which he was associated. In return, he received virtually all the honors available to an attorney, and many of those bestowed upon ordinary citizens too, including two Sagamore of the Wabash awards (from Governor Roger D. Branigin [Democrat] in 1966 and from Governor Otis R. Bowen [Republican] in 1975) and two honorary doctor of law degrees (from Indiana University, 1981, and Oakland City College, 1984).

Carl was also a joiner—the number of groups he has belonged to is staggering, especially when you realize that membership in an association or an organization for him also meant active participation. Besides membership in the county, state, and national bar associations, his other professional affiliations reflected the diversity of Carl’s legal “specialties.” He was a Fellow in the American College of Trial Lawyers and the American College of Probate Counsel, a member of the Federation of Insurance Counsel and the National Association of Railroad Trial Counsel. In addition, as a member of the Indiana State Bar Association, of which he served as president in 1944-45 and as chair of his House of

Delegates in 1963-66, Carl served on virtually every committee of the association including the Trial Lawyers Section which he established in 1957 and served as its first chairman. Carl also chaired the Trial Tactics Institute of the American Bar Association and participated in a number of Trial Practice or Trial Tactics Institutes. He also lectured on this and other topics at the law schools at Notre Dame University, Valparaiso University, and Indiana University, both in Bloomington and Indianapolis, the latter of which he also served one year as a “visiting practitioner in residence.” His other non-professional services included many leadership roles at the Main Street Presbyterian Church and as a Trustee of the Vincennes Presbytery and as the president of the Westminster Foundation at Indiana University, during which time a new Foundation Center was constructed. He also belonged to varied military, service, and Masonic organizations. Finally, Carl helped bring a number of public projects to his community. It was likely through his efforts that the Pike County Forest was established, that legislation providing for bridges over the White River between Pike and Knox Counties (given an overflow problem there, two bridges were necessary) was adopted, and as president of the Road 57 Association, he helped bring that state highway through Pike County.

Best of all, he carried the weight of his responsibilities as an attorney, a businessman, a philanthropist, and a civic leader easily, and he had fun, lots of it, along the way too. “You have to have a little damn fun to get along,” he told reporter Alan Julian in 1980, “[and] that’s what I have tried to do. I can say I’ve truly enjoyed my life.”<sup>1</sup> And he never complained about any problems, such as the chronic eye maladies that he encountered.

Some of this positive attitude towards life comes through in Carl’s rather whimsical entries on a late-in-life revision to his personal “curriculum vitae” on file at the Indiana University Alumni Office. There Carl called himself an “avid quail, pheasant, duck,

and game hunter,” and a “breeder of fine bird dogs, preferring pointers to setters.” (Elsewhere, in discussing his dogs, he said that they were “aristocratic”—they “summered in Saskatchewan, stopped over and had Thanksgiving dinner with me, and spent Christmas in Alabama, and wintered [there too].” He joked with his wife about them, telling Eulala that it cost more to keep the bird dogs than it did her.)<sup>2</sup>

In another entry on his “C. V.,” Carl called himself “a superb chef” who specialized in “the preparation of Southern Indiana dishes (and I can also peel potatoes and wash the dishes).” Moving on to his professional life, Carl immodestly (but most would say accurately too) claimed to be “a superb story teller,” who was “never at a loss for a new story when called upon,” and finally, in perhaps an intentional double entendre, he called himself “a stalwart at the bar.”<sup>3</sup>

Carl also loved to travel, and made several trips abroad in his later life—these included going along on at least five group tours organized by the I. U. Alumni Association. And he usually made his presence known on these occasions through the lavish parties he provided for his travel mates. Dagmar (Mrs. Edward) Jones was on the alumni trip to Egypt in 1979, which she evaluated for the university’s travel agent as “absolutely superb,” and she wrote a note to Carl thanking him for “the two magnificent parties” he had provided “which added real ‘class’ to the trip. Steaks in Egypt! You are a host without rival or equal.”<sup>4</sup>

Carl’s travels took him to London repeatedly, where his friendship with barrister Sir Percy Rugg blossomed and included a visit to Ascot and a seat next to the royal box (on a day when the Queen happened to be present). He also visited Dublin, Paris, Rome, and other European capitals that hosted American Bar Association annual meetings. Mrs. Gray accompanied Carl on those trips that did not involve air travel. Niece Judy Gray accompanied



Carl and Eulala on a London trip in 1971 (and perhaps others too). The Gray party sailed eastward to Southampton on the *Queen Elizabeth*, and returned aboard a French ship.

The key to Carl's success, in his law practice and in other areas of his life too, was preparation. "I've often said," Carl remarked in 1980, "you don't win cases in the courtroom, you win them by carefully preparing, and then you go into the courtroom to put in on the record."<sup>5</sup>

Among Carl's countless major achievements in law, politics, and business not properly covered in the chapters above was his work in law in helping to revise Indiana's civil code procedures, by adapting the federal rules of procedure for his state. In 1965 Carl spent many "weekends and evenings rewriting the rules of procedure, all 880 pages of them." These rules were then approved by the other members of his commission, adopted by the state, and they are still used today.<sup>6</sup>

When Carl was appointed by Governor Branigin in 1965 to the twelve-person Judicial Study Committee, he took it upon himself to study the federal rules of procedure in civil cases, adapt them to Indiana's system, and then write them out in longhand. He next had the secretary of the Indiana State Bar Association provide copies of this work to Carl's fellow commissioners who approved them, as did the General Assembly in 1970, and they went into effect in 1972. The reason for this work that Carl did in 1965 is spelled out in a talk that he gave to new members of the Bar in 1967:

In Indiana the Judicial System was created by the adoption of the Judicial Articles in the Constitution of 1851. These Articles have not been amended since their adoption. In the interim we have seen the population in this State explode. We have seen the economic condition of the State substantially challenged from a sparsely settled agricultural State to a substantial agricultural State and industrial state. We have seen the development of the coal industry and the oil industry in this State; we have seen the

rapid development of all of our institutions and the scientific and technical development which now astounds the world. During this interval of development our judicial system has remained static, and is now antiquated, if not chaotic. We have a multiplicity of Courts, without a uniform Court system. It is needless to say judicial reform is a must if it is to function and perform the task assigned to it in the changed conditions of this State and this Nation.

You are entering the practice under a Civil Practice Code enacted in 1881. It has been my privilege and pleasure to have been actively engaged in the practice of my profession since November 1, 1920. During this period of time much of my time has been devoted to undertaking to bring about reforms in Procedure in this State. This effort, generally speaking, has met with frustration. The Civil Code was amended in 1965, which resulted in the adoption by Legislative enactment of the Federal Rules governing Discovery Procedure, and also enacting into law the Federal Rule providing Summary Judgment Procedure. These have been the only worthwhile changes in the Civil Practice Code since I entered the practice.

In addition to the Civil Practice Code, we have Rules of Practice adopted by the Court. You will find yourself in a situation where parts of the Rules of the Court prescribe certain procedures and the Civil Code provides other procedures. This creates confusion which has resulted in an antiquated if not a chaotic system of procedure in this state.

You will find that there are certain Rules of Procedure in the State Courts which are entirely different from the Rules of Procedure in the Federal Courts in this State. There is no rhyme or reason in a System which requires the Members of the Bar to be familiar with two different and conflicting Rules of Procedure.

As a result of the failure of the legal profession to keep pace with the progress made by the other professions, businesses and industries in this State, long delays have resulted as a result of our antiquated judicial system and antiquated rules of procedure which has caused the public to lose respect for our profession and lose confidence in our Courts.

As members of this profession, we should bear in mind that the Courts are the last bulwark guarding our freedom, liberty and property rights. When the people lose confidence in this system they lose respect for law and order, then violence takes over and

chaos exists. When chaos is created, freedom, liberty and justice will disappear from this fair land.<sup>7</sup>

At this same time Carl served on another commission that wrote a new judicial article for the Indiana Constitution, which included, for example, new ways of selecting judges for the Indiana Supreme and Appellate courts. Following a heated campaign in the general election of 1970 seeking support for passage of the constitutional amendment, it was narrowly adopted, and among other things, established new ways for the selection of the higher court judges.

Politically, as shown above, Carl got off to strong start, serving successively as Prosecuting Attorney, Pike County Democratic Chairman, and State Senator in the 1920s, but he declined repeated opportunities to move up considerably higher in the realm of Indiana and national politics. In typical Carl Gray fashion, he made his point about not being willing to serve in the United States Senate humorously, metaphorically, and firmly. He believed his opportunity for such service came with various restrictions upon his freedom of action, so he pointed to his shirt collar, saying that he had placed “this collar around my neck myself. And I don’t intend for anybody else to put a collar around there . . . .”<sup>8</sup>

In business affairs, the activity most often mentioned is Carl’s role as a banker, and he served for a great many years on the board of directors, and as president, of the First National Bank in Petersburg. But there is an unsung aspect of Carl Gray’s life here, his connection with coal mining, both in this country and abroad. Carl’s neighbor and eventually his best friend, Kenneth Youngs, was the catalyst here. Unfortunately, the Gray records that would permit full development of this story are inaccessible (and possibly destroyed), but no life of Carl Gray would be complete without at least a brief mention of the Gray-Youngs business connections with one of southern Indiana’s major industries and the way in which these two men quietly affected the growth of that industry locally

and also helped in the development of “surface mining” abroad, specifically in Wales. Such operations are referred to as “strip mining” in America, as “opencast” mining in Great Britain.

Youngs was a mine operator in Michigan who was attracted by reports of “vast coal reserves” in southwestern Indiana, so he moved to Petersburg in 1934. There he found an office on the second floor of the First National Bank building (at the back). Carl Gray’s office was on the same floor at the front, overlooking Main Street. The two men met there and, according to Youngs’s eldest son, began both a life-long friendship and a business relationship. Soon afterwards, still in 1934, Youngs started his Canal Coal Company, with property located along both sides of the old Wabash and Erie Canal.<sup>9</sup> The portion of this canal, connecting Lake Erie at Toledo with the Ohio River at Evansville that passed through Pike County was constructed in the 1840s and 1850s, but ceased operations there in 1860, and the land reverted to private ownership.

Youngs, with Carl as the attorney for the fledgling company and a de facto member of its board of directors, soon expanded beyond the former canal lands, and acquired two other coal mining companies—the Midland and the Winslow Coal Mining companies—and established a second office in Indianapolis. While there he received a call from an unknown Washington, D. C., bureaucrat inviting him to go to England and work with the British Coal Board, later the National Coal Board. He arrived in wartime London in 1944, and along with two other representatives from Pennsylvania, advised the British regarding their first “opencast” mining operations. Carl’s “other job” as a busy attorney in Petersburg did not permit him to go to England too at first (he went there in 1971), but he was involved in behind the scenes in drafting strong land reclamation laws that were enacted in Britain in the 1940s (and in America in the 1960s). Through his partner Youngs, who continued briefly as a coal mining consultant after the war ended, Carl came to know the attorney of the British company Youngs had worked

with most closely, Percy (later Sir Percy) Rugg. When Sir Percy visited Carl in Petersburg, of course he took great pleasure in showing his distinguished guest around the city and various places in southern Indiana, probably those associated with Abraham Lincoln in his youth and perhaps the George Rogers Clark Memorial in Vincennes and the site of Robert Owens's communitarian experiment at New Harmony.<sup>10</sup>

Much of this mining story is confirmed by a book on South Wales in the 1960s, which contains a chapter on "The Coal Industry" that speaks of the "dramatic changes" in methods of coal extraction that followed the Labor Government's policy of nationalization in 1946. More confirmation is found in a letter to the editor of the *Western Mail*, the "national newspaper of Wales," in 1944. There, in his discussion of why Welsh mining engineers should visit America coal mines, Sir William J. Firth asserted that America's coal "output per man" was four times greater than ours, "primarily because their mining methods . . . are vastly superior to ours." Sir William's views, however, were challenged by a Cardiff engineer, David Evans, who stated that the American methods of mining, in particular their machinery, "would not work here." The issue, he concluded, "is not as simple as Sir William Firth suggests."<sup>11</sup>

Indeed, a scholarly analysis of "opencast mining" supports Evans's position. Noting first that radically different geologic formations in the two countries and the places where coal deposits remained in Britain indicated that opencast mining there would have only limited, short-term use once the heavy wartime demand for coal had ended, but the new American technology and continuing cuts in the cost of production in this manner made the use of "opencast" mining operations surprisingly long-lasting, even into the twenty-first century.<sup>12</sup>

When Carl Gray began thinking late in life about his legacy, he decided he would like to have some of it live on between the covers of a book. Such a work, he thought, should consist primarily of funny stories about things that had occurred during his long years of practice, and that he loved to tell over and over. But he probably didn't consider that a book on his life should and would contain perhaps as many stories about Carl himself. One event mentioned in an interview with Carl's secretary, when put together with a recently discovered news item about the retirement of a long-time court reporter in Boonville, yields a rather remarkable story. As mentioned, Carl believed in the necessity of preparation before going to trial, but he was caught short once down in Boonville. His solution to the problem of getting more time for preparing his case was to fake a heart attack! Carl's theatrical talent was put to the ultimate test, and he certainly convinced the court reporter there (and the judge and others too) who recalled the time when Carl Gray, "an attorney from Petersburg," had "a heart attack." "He just fell over," she said, when talking about the most memorable thing that had happened during her time as a court reporter. Neither Carl's secretary nor the court reporter provided a time frame for exactly when this happened but Carl did manage, in this dramatic (and probably unethical) fashion, to get the additional time needed while he "recovered" from his illness.<sup>13</sup>

Earlier, Carl recognized that in the pre-television days of his early practice, people went to court to be entertained, and he said, "We did put on a show for them." Perhaps his "training" in doing this helped prepare him for the unplanned show in Boonville.

Other Carl Gray stories concern him liking to be the center of attention and letting others know about his connections around the country. He was known to cry out to his secretary in a crowded office, "Call the governor!" or "Get Senator Capehart on the phone!" He also, according to his secretary, sometimes arranged to have

himself paged in public while attending a bar association meeting, another way to get his name noticed in large groups.

Other stories concern Carl's fondness for alcoholic beverages, and the little games he played as he tried to keep this part of his life unknown to his wife. Chief Justice Richard Givan remembers Carl just before a formal dinner privately telling the waiter at his table that "I am going to order tomato juice, but you are to bring me a Bloody Mary." And at other times as several of his friends told me, at dinners, when his wife was at his side, Carl's water glass was filled with gin or vodka rather than water.<sup>14</sup>

Back home, it was recounted by a secretary, that Carl often finished a work day by crying out, "Bar's open!" Then he and his colleagues would repair to the back storeroom where the drinks were kept and help themselves. But, as Mrs. Novak also stated, they kept a lookout for Mrs. Gray. If she happened to drop into the office during party time, the alcoholic drinks were poured down the drain. Some believe Mrs. Gray was aware of Carl's little tricks, sometimes teasing him by offering to exchange water glasses with him, which, of course, Carl had to refuse to do, but she also once said, quite seriously, to a fellow diner, "Carl, you know, doesn't drink, nor do I." Perhaps she was trying to turn her hopes into reality.

In other ways too, Carl influenced the work of other attorneys while his courtroom antics amused them. One of Carl's early associates was Curtis V. Kimmel of Vincennes, whose first words to me about our mutual friend were that "Carl taught me how to charge fees." It seems that these two attorneys represented the opposing elderly parties in a divorce action, and Carl told Kimmel that he was going to charge his client, the woman, \$5,000, and that Curt should charge the same, even though at that time his usual fee was just a fraction of that amount. Carl knew that the husband, a wealthy Dubois County farmer, was going to pay both fees and could easily afford them.

Carl had read his client correctly, and, after paying Carl, the farmer happily paid Kimmel too. Moreover, to show there were no hard feelings, he invited Kimmel to dinner to meet his young “girlfriend,” and to be the best man at their imminent wedding. He also promised that if this marriage produced any children, they would name their first son after Mr. Kimmel.

The episode that most amused Judge Hugh Dillin was Carl’s handling of a personal injury lawsuit before him down in Evansville. The plaintiff claimed that he had suffered permanent debilitating injuries at the hands of the defendant, Carl’s client, and could no longer move about freely. As Carl narrated this story to me in 1988:

When he [Mr. Swain] testified I asked some preliminary questions, then [after asking Mr. Swain to step down from the witness stand] I said, “Now, Mr. Swain, I want you to show the jury how far you could bend over before you received your injury.” He bent over, almost touched the floor. I said, “Now, Mr. Swain, I wish you would show the jury how far back you could reach before you got your injury.” He went through all the motions. Finally, Judge Dillon got tickled and called a recess. . . . But after all that show down, damned if the jury didn’t return the verdict in favor of Swain. Not for a big amount, but I think for seven or eight thousand. . . . He wanted a hundred and some odd thousand.<sup>15</sup>

An interview with Chicago attorney Justin A. Stanley, a former president of the American Bar Association, helped confirm the national stature of Carl Gray as a widely known and highly respected lawyer, even if he remained a small-town county lawyer. Here are extracts from my notes following an extended meeting with Mr. Stanley:

I arrived at 190 South LaSalle Street, the address of an imposing stone building some 28 stories tall, to meet with Mr. Stanley, at 11:30 a.m. on the morning of January 3, 1992. Only the farthest right bank of elevators carried past the 17<sup>th</sup> floor, by which I reached the 21<sup>st</sup> floor and the impressive offices (one of many throughout the world) of the law firm of



Mayer, Brown & Platt (in passing, Stanley mentioned that the firm now has 450 attorneys, with offices in Los Angeles, Houston, Washington, New York, London, and elsewhere).

His substantive comments about Carl include the following: “He was a country boy; he spoke in a country manner. He would probably not have fit in an office like this. . . . He did the right thing by staying in Petersburg. I never saw him in his prime, nor in action, but (smiling) I can imagine him. I suspect he would have been very good with juries.” Stanley agreed with my comment that Carl was not a legal scholar, but given his success, said that “I think he was a pretty damn good lawyer” and that he “had good judgment within the university [as a trustee].” He suggested that he may have been one of Carl’s best friends in his later years, a mutual thing. “Carl made friends easily and genuinely.” He also said that “Carl’s accomplishments, while not unique, were nevertheless unusual, and that they covered an extraordinarily long period.” He was also impressed with “the versatility of Carl’s practice.”

President John Ryan’s “biography” of Carl Gray, at the time Carl received an honorary degree from Indiana University, is most instructive and eloquent. Ryan considers Carl’s “most significant contributions” to have been in the practice of law in Indiana, where “he both served the law and helped write it.” While serving in the Indiana State Senate, “he wrote the law establishing a state-wide property tax levy and a bonding authority for the construction of academic buildings at the state universities.” And, as a practicing attorney, Carl “has appeared in legal cases in over half the county courthouses in Indiana.” In arguing those cases, in accordance with the “grand theatrical tradition” of attorneys, Carl was “as capable of quiet courtesy as of impassioned anger,” and his “remarkable ability to extemporize never belied the meticulous care that went into the preparation of the case.”<sup>16</sup>

It should also be remembered that Carl was the first attorney to use motion pictures in evidence in a trial in Indiana, thereby changing forever the ways in which cases may be presented in court.

London barrister Henry Cecil, a prolific writer of books both fiction and non-fiction about the law, has described the essential qualities of a successful barrister. At the top of his list was simply “patience,” followed by “the ability to understand” and “to express.” He then named “integrity” and a “capacity for hard work.” Almost as an afterthought he listed a fifth quality saying that “good health is essential,” too. In fact, he said that it is “almost impossible to be successful at the Bar without, at any rate, initial good health.”<sup>17</sup>

In my judgment, Carl had all these qualities—his integrity was absolute, and his ability “to express” himself was legendary as was his capacity for hard work. Carl often referred to these attributes, noting that during a trial, he was fully committed to its successful outcome, that he often worked on weekends, and that he had been “blessed with good health.”

Carl, of course, never retired from his profession, rarely even giving any thought about its inevitable ending. He said he didn’t even know how to loaf, and planned to keep going as long as he could. He did, finally, after arranging for a book on his life as an attorney in the late 1980s, also draw up his last will and testament, basically leaving all his personal property to his favorite niece and nephew, Judy and Tom, both of whom then lived in Petersburg. Judy received the house and car, Tom the old office on Main Street. Most of his accumulated wealth also went to his niece who had lived with “Uncle Carl” after his wife died in 1978. During that time, as well as on long visits before 1978, Judy became Carl’s homemaker, cook, gardener, and chauffeur. She hired others to do those things she could not do herself, but she was Carl’s constant companion during his long period as a widower.<sup>18</sup>

At one point in the last decade of his life, Carl was asked by a reporter how he wanted to be remembered. Upon thinking briefly about this, Carl came up with this for an epitaph, and as usual for

an attorney, we can let Carl have the last word: “The old boy never missed anything voluntarily.”<sup>19</sup>

## Notes to Chapter 10

### Legacy

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<sup>1</sup> Julian, "Shades of Gray," undated clipping from the *Evansville Courier*, 1980, in the Carl M. Gray Papers, Petersburg.

<sup>2</sup> Vanessa Zimmer, "The Law According to Gray," *The [Dubois County] Saturday Herald*, October 22, 1983.

<sup>3</sup> Carl M. Gray File, Indiana University Trustees, Indiana University Archives, Wells Library, Bloomington.

<sup>4</sup> Dagmar Jones to Carl M. Gray, September 28, 1979, Office Files, Carl M. Gray Papers, Petersburg.

<sup>5</sup> Julian, "Shades of Gray."

<sup>6</sup> Zimmer, "The Law According to Gray."

<sup>7</sup> Remarks at New Admittees Luncheon, Indiana State Bar Association, May 17, 1967, Carl M. Gray Papers, Petersburg.

<sup>8</sup> Zimmer, "The Law According to Gray."

<sup>9</sup> Author interview with Bud Youngs, February 6, 1992. Bud Youngs, after graduating as a mining engineer from Stanford University in 1950, immediately joined his father's business and shared his remarkably detailed information about the Youngs's coal mining operations in Indiana and Illinois (and abroad). Incidentally, Bud credited Carl with having helped him personally "a great deal," acting in fact as "a second father." "My life," he said, "is different because of him."

<sup>10</sup> Ibid. A great deal more about Carl's and Kenneth Youngs's relations with coal mining in Wales and the laws regulating it that Carl had proposed may be found in his oral history interview (on April 12, 1979) at the Indiana University Oral History research office. Carl mentioned there that he had visited the site of "mining operation" near Swansea, Wales, in 1971 (his second to that area), and the required reclamation was so complete that "you could scarcely tell that there had been any strip mining" in that location.

<sup>11</sup> *Western Mail and South Wales News* (Cardiff), May 10, May 12, 1944.

<sup>12</sup> See chapter 8, "Opencast Mining," of William Ashworth, *The History of the British Coal Industry, Vol.5. 1946-1982: The Nationalization of Industry*

(London, 1985), 447-472. For an overview of coal mining in Indiana during the first half of the twentieth century, see James H. Madison, *Indiana Through Tradition and Change: A History of the Hoosier State and Its People, 1920-1945* (Indianapolis, 1982), 225-228, 237-238; see also Mark I. Williams, "Surface Mining in Indiana," *Indiana Magazine: A Publication of the Indiana Department of Commerce* (February 1977), 18-25.

<sup>13</sup> "Clara Tennyson closes the book," *The Warrick Courier* (Boonville), January 3, 1986.

<sup>14</sup> Author interview with Richard Givan, July 12, 1989.

<sup>15</sup> Author interview with Carl Gray, March 22, 1988.

<sup>16</sup> Copy of the speeches of President Ryan may be found at the Indiana University Archives, Wells Library, Bloomington, Indiana, as well as on-line.

<sup>17</sup> Cecil, *Brief to Counsel* (London, 2nd edition, 1972), 24-25.

<sup>18</sup> Last Will and Testament of Carl M. Gray, Will Record Book 11, 733-739, Pike County Courthouse, Petersburg. This interesting document, while listing the names of four of five of his surviving siblings but leaving them nothing because Carl considered them "financially able," bequeathed a substantial amount of cash to his younger brother Francis if the estate exceeded a certain figure, and also a donation of \$10,000 to Georgia Sutton Coleman, in appreciation of her more than 35 years of "faithful service as my secretary." Judy received the balance of his assets, but if it reached a certain high level, she was to divide "the rest" over that amount with her uncle, Francis.

<sup>19</sup> Julian, "Shades of Gray." In a later statement of reminiscing, shortly after reaching his 87<sup>th</sup> birthday, Carl wrote that "I am enjoying good health and am actively engaged in my Profession and devote a portion of my time to business, and pubic charities and public affairs. I have been blessed with good health throughout the years. My dear Eulala and I had fifty-one delightful years together. We were able to live as we desired, go where we desired and enjoyed life to the fullest extent. I have been blessed with wonderful friends throughout my life. To summarize, I have lived a full life. I hope it has been fruitful, beneficial to others; that I have made a worthwhile contribution to my Profession, to my University, to education generally, to my Church and my community and otherwise." Fragment, Carl M. Gray Papers, September 1982, Petersburg.

## A Note on Sources

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This book has been based largely upon primary sources, because there are almost no secondary sources available on the life of Carl M. Gray. The ones that exist are journalistic in nature and come from the writings of newspaper and magazine reporters. There are also some brief biographical sketches on Carl and some of his associates published in collections about former members of the Indiana General Assembly and of the Indiana University Board of Trustees. But the primary sources available, upon extensive research among such records, are extensive—these materials include the newspapers from Carl’s home community, especially *The Press-Dispatch* of Petersburg, established in 1967 upon the merger of *The Petersburg Press* and Winslow’s *Pike County Dispatch*, which also should be consulted for the years before 1967; the *Indianapolis Star* and the *Indianapolis News*, particularly for the years in which Carl served in the Indiana State Senate and when his trial cases made statewide news; and the *Indiana Daily Student* for the period of Carl’s tenure as an Indiana University Trustee, 1967-1975. Unfortunately, as explained in the Introduction to this book, the huge cache of materials Carl had preserved in his massive collection of case files, more than 10,000 of them, that also contained much of his office correspondence, has not been made available to me for consultation after 1992, and these files may have been destroyed.

There are a few other published sources, books, which shed light on different aspects of Carl’s life and provide context for some of his activities. These include county and state histories for Pike and Indiana, the excellent 3-volume history of Indiana University written by Professor Thomas D. Clark, and histories of the coal and strip mining industries in America and Wales. The most useful of these books are cited in the chapter endnotes.

Saving the best for last, the most helpful and revealing sources of information about Carl Gray’s life have come from those who knew him. Through dozens of personal interviews as well as

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correspondence with fellow attorneys, judges and even jurors, clients, employees, some family members, and Carl's friends and neighbors, I learned a vast amount of information about the man and hope that I have been able to pass that information along in a full, fair, and interesting manner. I want to repeat here my gratitude to all those with whom I spoke and corresponded about our mutual friend, and express my regret about having taken so long to complete this work that many who helped make it possible did not live long enough to see it.

